

PLACER COUNTY
AIRPORT LAND USE COMMISSION

REQUEST FOR STAFF REVIEW

PLACER COUNTY
AIRPORT LAND USE COMMISSION (ALUC)

299 Nevada Street
Auburn, CA 95603

Phone: 530.823.4030
Fax: 530.823.4036

Date Received: 2.25.2010

Received From:
Placer County CDRA

Airport Name:
Auburn Municipal Airport

ALUC Case No.: 2009/2010 -- 10

Project Title: Bohemia Retail Minor Use Permit (T2010 0058)

Project Description:

Initial Project Application, Minor Use Permit, and Design Review for the construction of a 155,000 SF retail building on 18.62-acres located on the east side of SR 49 near the intersection of SR 49 and Luther road (AP 052-102-012/-103/-017/-053) in north Auburn.

Application for: ☐ Rezone ☐ General/Community Plan Amendment ☒ Other

Background

Airport Land Use Commission (ALUC) staff, based on Placer county requests, have prepared a number of comments for the following environmental reviews and proposals.

- Fiddlergreen Subdivision—EIR NOP (PSUBT2004 0773) - ALUC 2004/2005-26 (May 5, 2006)
- Bohemia Subdivision – DEIR Comments - ALUC 2006/2007 – 15 (December 21, 2006)
- Bohemia Subdivision (PSUBT2004 0773) - ALUC 2006/2007-15A (April 16, 2007)
- Off-Site COSTCO Sign (PMPC T2008 0278) - ALUC 2007/2008 – 13 (June 11, 2008)

As noted in previous notes, the ALUC's mandatory responsibility is to review proposals for consistency with the Placer county Airport Land Use compatibility Plan (PCALUCP). Review of environmental documents such as DEIRs is not required. Comments on environmental documents were offered to facilitate formal ALUC reviews of the proposed project. The following is the formal PCALUCP consistency determination for the proposed project.

ALUC Staff Comments

The project site is approximately 1.5 miles from the Auburn Municipal Airport runway. The PCALUCP, illustrates that the site is in the in the airport's influence area boundary (see

attached map)¹. One Compatibility Zone (Figure 3A and Compatibility Zone Boundary descriptions – pages 3-4/5) lies over the site.

- Compatibility Zone D – the Other Airport Environs -- is sometimes overflown by aircraft arriving and departing the airport. Hazards to flight are usually the only compatibility concern.

Primary Compatibility Criteria (Table 2A) summarizes maximum density/use intensity, prohibited uses, and other development conditions. Appendix D – Compatibility Guidelines for Specific Land Uses – cites that all retail uses and large shopping centers are generally compatible (Table 2A) in Compatibility Zone D.

The PCALUCP requires that an ALUC consistency determination be completed on a proposed project before local agency approval.

Note. State law requires each local agency with jurisdiction for land uses within an ALUC's planning area to modify its general plan and specific (community) plans to be consistent with an airport land use compatibility plan. To date, Placer County has not completed this requirement.

ALUC Staff Evaluation

1. Noise. The site is outside of the airport's noise contours.

The proposal is consistent with PCALUCP noise provisions.

2. Safety. Zone D has no commercial use intensity limits.² According to the PCALUCP, land uses such as spectator-oriented sports stadiums, amphitheaters, and concert halls that attract very high concentrations of people in confined areas are generally prohibited. No use is to be prohibited in Zone D if its usage intensity is such that it would be permitted in Zone C2 (100 people per acre average for the site and 300 people per single acre).

To determine use intensity for the proposed project and the mixed use alternative, the following **assumptions** were made:

- | | | |
|-----------------------------|----|---|
| • Retail Off-street parking | -- | County Planning staff indicated 1 parking space per 300 SF gross floor area |
| • Gross acreage | -- | 18.62 acres – no adjacent street frontages |

¹ See PCTPA's web site (www.pctpa.net) for more on the PCALUCP.

² Use intensity is a general planning guideline to aid in determining the acceptability of proposed land uses. The PCALUCP specifies that use intensity in unincorporated Placer County is to be calculated based on required off-street parking spaces (Primary Compatibility Criteria – Table 2A, appendix C, and appendix D). In addition, a site's 'gross acreage' is used to determine use intensity. This gross acreage is the parcel area plus one half of fronting streets.

were considered.

Based on these assumptions, the proposed project (discount club/superstore) and the mixed use alternative would not exceed Zone C2 use intensity limits.³

The proposal is consistent with PCALUCP safety provisions.

3. Airspace Protection. Compatibility Zone D requires an airspace review by ALUC staff for structures greater than 150'-high. Federal Aviation Administration (FAA) notice may also be required.

The proposal would be consistent with PCALUCP airspace protection provisions if no structures exceed 150'.

4. Overflights. Overflight compatibility concerns encompass a combination of noise and safety issues. There are no overflight compatibility provisions for Compatibility Zone D.

The proposal is consistent with PCALUCP overflight provisions.

General Note: the ALUC staff recommends that anyone intending to offer land for sale or lease with the airport's influence area to disclose this fact. California's Business and Professions Code (Section 11010) and Civil Code (Sections 1102.6, 1103.4, and 1353) specify required disclosure for certain actions. See www.leginfo.ca.gov/calaw (Find California Law).

³ Proposed Project – Discount Club/Superstore

155,000 SF building / 300 SF (517 spaces x 1.5 people per space) = 776 people
776 people on site / 18.62 acres (no street frontages included) = **42 people per acre average for the site**

776 people on site / 3.55 building footprint = **219 people per single acre.**

Mixed Use Alternative

64,300 SF building / 300 SF (215 spaces x 1.5 people per space) = 323 people
35,700 SF building / 300 SF (119 spaces x 1.5 people per space) = 179 people
502 people on site / 18.62 acres = **27 people per acre average for the site**

323 people (64,300 SF building) / 1.47 building footprint = **220 people per single acre.**
35,700 SF building footprint is less than one acre in area = **179 people per single acre (building occupancy)**

PLACER COUNTY
AIRPORT LAND USE COMMISSION

Applicable ALUC Plan:

Placer County Airport Land Use Compatibility Plan – October 25, 2000

Applicable ALUC Policy: ☐ Noise ☐ Safety ☒ Airspace Protection ☐ Overflight

☒ Compatible

☒ Compatible subject to Conditions (see ALUC staff comments)

☐ Incompatible because of –

☐ Safety

☐ Noise

☐ Height

☐ Density/Intensity

Reviewed by:

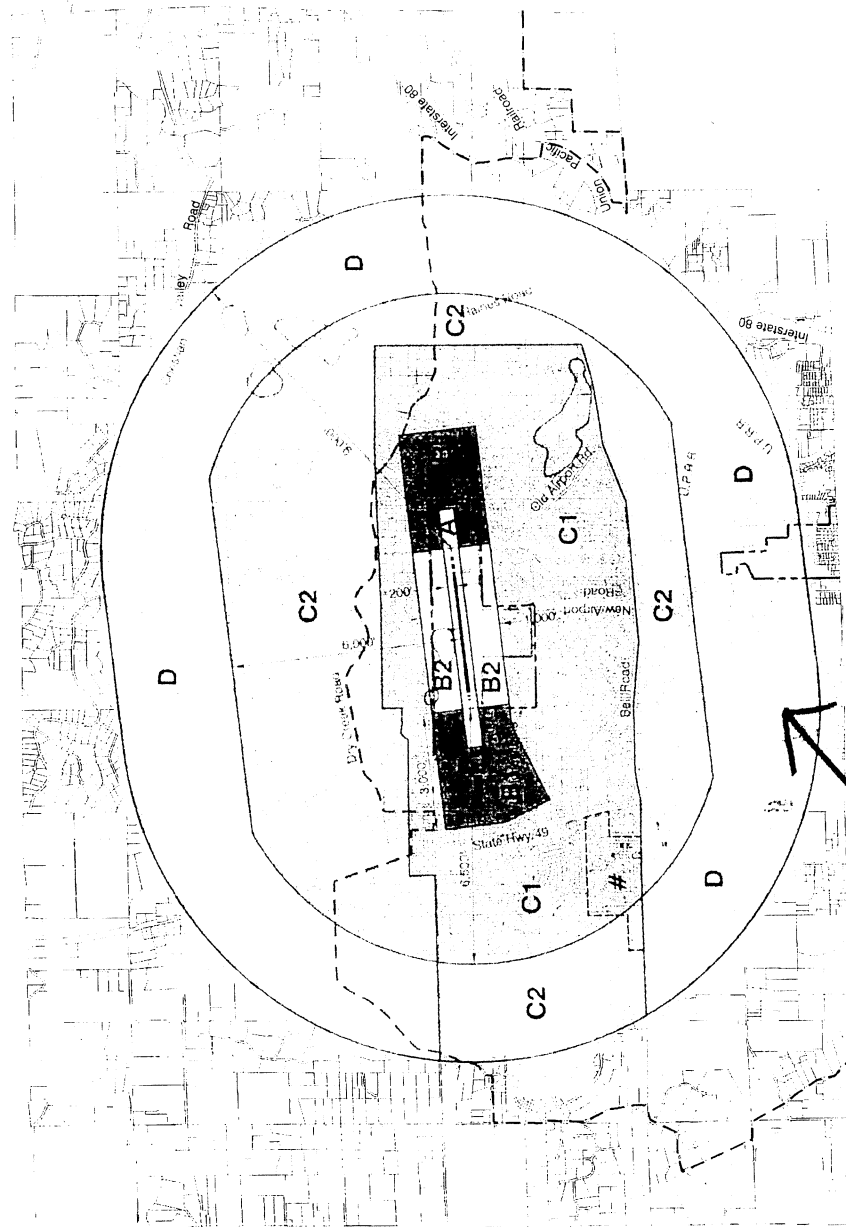
Date:

Stan Tidman, Sr. Planner -- TEL: 530.823.4033

March 8, 2010

Copies: City of Auburn

Bob Richardson, City Manager
Will Wong, Community Development Director



Legend

Compatibility Zones

Airport Influence Area Boundary

Zone A

Zone B1

Zone B2

Zone C1

Zone C2

Zone D

Height Review Overlay Zone

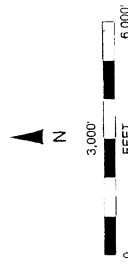
Boundary Lines

Airport Property Line

Auburn City Limits

Auburn Sphere of Influence

Note: longitudinal dimensions measure from end of primary surface 200' from ends of extended runway



Source: Shults Men Associates (October 25, 2000)

Figure 3A

Compatibility Map Auburn Municipal Airport

PROJECT SITE

Kathi Heckert

From: Loren Clark
Sent: Monday, March 15, 2010 3:28 PM
To: Maywan Krach; Gerry Haas
Cc: Kathi Heckert
Subject: FW: please fwd to the planning commisioners

For the file...

Kathi -- are you forwarding these to the Commissioners at this time?

From: mavicg [mailto:mavicg@att.net]
Sent: Monday, March 15, 2010 2:18 PM
To: Loren Clark; Lisa Cary; Paul Thompson
Subject: please fwd to the planning commisioners

since I cant find an address for them :)

just my 2 cents on the Bohemia project as a voter I have the right to share my thoughts.

Someone needs to tell Conkey and his pals(you know who you are) and the BOS that you dont always get to make a freakin killing on every investment you make. Sometime just tenfold is enough. He owned the property for over 20 yrs, most of it is developed so I bet he's already made plenty on his investment. He needs to walk away with his pockets already full (or revise his plan). So you want the government out of landowners business except you want intervention when the local yocal people say NO.

Supervisors (and planning commissioners) please tell me how it can possible sound right to you that one landowner who has an investment property(not a residence meaning the dude isnt even gonna be there ever again after he developes it and makes a killing) can persuade all the powers that be (YOU) to ruin the safety , security of over 600 peoples own investment in their home(the american dream) by giving the green light to this intrusive and illplaced project?

(One investor ruining over 600 peoples homes)

(one person screwing over 600)

If it sounds ok to you then I hope it happens to you too.

B Driscoll

Auburn

FIDDLER GREEN HOMEOWNERS ASSOCIATION

Lee Lively, Treasurer 1702 Tracy Lane, Auburn, CA 95603 (530) 889-1242 lmlively@onemain.com

Date: March 16, 2010

To: Placer County Planning Commission

Subj.: Bohemia Retail Project, Canal Street Secondary Access

RECEIVED
MAR 17 2010

PLANNING DEPT.

Dear Sir, I have sent the following notes to Mr. Deal at Caltrans Office of Transportation Planning – East and to the Placer County Board of Supervisors. Please allow these notes on a topic that is critically important to the home owners but ignored by the project developer.

Canal Street cannot be designed to accommodate substantial traffic volumes. Canal Street (a residential street) is narrow with slight hills and curves, and it cannot be widened due to the immediate proximity of Wise Canal on the West and Fiddler Green Canal on the East. For the same reasons, Canal Street is not suitable for use during the construction phase.

Signalizing the intersection of Luther Road/Canal Street would cause absolute bedlam in the area with no improvement in LOS.

This should not be an issue. The developer states: Transportation and Circulation impacts under the No Canal Street Access Alternative would be equal or vary slightly from the proposed project. In fact, all CEQA impacts of the No Canal Street Access Alternative are Equal or Less – except Air Quality, which is Significant and Unavoidable for the project anyway.

On 2/9/10, The Placer, North Auburn Municipal Advisory Council made recommendation to the Planning Commission against the use of Canal Street as a Secondary Access to the project.

The members of the four effected Homeowner Associations (450+ homes) have organized in unanimous opposition to the Canal Street Secondary Access and the signalization of the Luther/Canal intersection.

Thank you.


Lee Lively

FIDDLER GREEN HOMEOWNERS ASSOCIATION

Lee Lively, Treasurer 1702 Tracy Lane, Auburn, CA 95603 (530) 889-1242 lmlively@onemain.com

Date: March 22, 2010

To: Placer County Planning Commission

Subj.: Bohemia Retail Project, Transportation & Circulation

RECEIVED
MAR 23 2010

PLANNING DEPT.

Dear Sir. Please include this letter in the Administrative Record. I sent the following note to Mr. Nicholas Deal, Chief; Office of Transportation Planning – East; Department of Transportation:.

Note to Caltrans: In my response to the DEIR, I pointed out the basic error of the differing methods of calculation used to determine trip generation rates for the development options 1 and 2.

However, on closer examination, I see other errors and even absurdities. I suppose your office has discovered these – and more.

A cursory analysis shows a 22% (1310 trips) increase in daily proposed trips by the Discount Superstore over the Discount Club. However, the Superstore increase in AM proposed peak hour trips is more than 75% (117 trips) and the increase in PM proposed peak hour trips is only 6% (38 trips).

In addition, the Superstore AM and PM peak hour trips are not only wrong, they are ridiculously too low. It is obvious that the Superstore's simple average of daily proposed trips/hour (735) is far greater than either the proposed AM (117) or PM (38) peak trips/hour.

One wonders if those who reported the Transportation & Circulation data intended to mislead.

I will ask the Placer Planning Commission to include this letter in the Administrative Record.

Thank you.


Lee Lively

Analysis

Superstore draws **22% (1310 trips)** more daily trips than Discount Club (**6,024 trips**), BUT
Superstore draws **79% (117 trips)** more AM peak hour trips than Discount Club AM peak hour (**149 trips**).
Superstore draws **6% (38trips)** more PM peak hour trips than Discount Club PM peak hour (**586 trips**..
Superstore Daily Trips = **7,334**; Average Trips/Hr = **733 Trips**

Reference

As illustrated in Table 8-7, full development of the **discount club** store project is anticipated to result in **6,024** daily trips, of which **149** would occur during the AM peak hour, and **589** would occur during the PM peak hour.

As illustrated in Table 8-8, full development of the **discount superstore** project is anticipated to result in **7,334** daily trips, of which **266** would occur during the AM peak hour, and **627** would occur during the PM peak hour.

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Kathi Heckert

From: Gerry Haas
Sent: Monday, April 05, 2010 11:06 AM
To: Kathi Heckert
Subject: FW: Newspaper Advertisement

Kathi,

Response to Bohemia ad in the Auburn Journal.

Gerry Haas, Associate Planner
Placer County CDRA
530.745.3084
ghaas@placer.ca.gov

-----Original Message-----

From: Maywan Krach
Sent: Monday, April 05, 2010 8:53 AM
To: Gerry Haas
Subject: FW: Newspaper Advertisement

Gerry, this comment letter did not address the Bohemia DEIR. I'm forwarding it to you for record and/or response. ECS will not enter this email in our file unless otherwise instructed.

Thanks,
Maywan
530-745-3132

-----Original Message-----

From: David A Rose [mailto:roseconsulting@wavecable.com]
Sent: Sunday, April 04, 2010 4:18 PM
To: scavolt@gmail.com
Cc: Placer County Environmental Coordination Services
Subject: Newspaper Advertisement

Mr. Cavolt:

I have read your paid advertisement in support of the "undetermined" anchor tenant proposed project for the former Bohemia site between Highway 49 and Canal Street. If your intent was to sway opinion in support of the proposal, you failed dismally. In fact, the majority tone of your article was arrogant and inflammatory. Rather than garner support in favor of the proposal, it was filled with sarcasm and "holier than thou" personal opinion.

I am a 30 plus year resident of Auburn, all of it living off of Luther Road. The last 24 plus years I have lived in one of the subdivisions adjoining the old Bohemia site. I patrolled the area while I was working for the Sheriff's Office. I am very familiar with the history of both the site and surrounding communities. I get the impression from your article, that neither you nor Mr. Conkey are residents of the Auburn area nor the affected adjoining communities.

You were extremely disingenuous in many of your "facts" quoted. The residences that will be affected by the increased traffic on Canal Street are ALL of the homes within the adjoining 3 subdivisions, not just those directly adjacent to the proposed development. As for the traffic signal, I don't recall anyone being asked to vote one way or the other on it. It is

already very difficult and dangerous to exit off of Canal onto Luther and vice versa. The most recent road work on Luther just off of 49 highlights one of the more challenging engineering problems with increasing the vehicle load on Luther Road; that of the canal crossing under the roadway. The extremely short "improvement" to Luther Road has only added another choke point at the canal.

Your opinion that the residences have not lived up to their personal responsibilities to oppose this development, is again short sighted. It is apparent from your very biased writing that you did not read the voluminous emails and hand written letters that were sent to the Planning Department in opposition to the development. Many of the residents of the surrounding subdivisions could not attend the community meetings held. That is why there were arrangements for many of us to submit written objections.

Your specific quotes of "mob rule" and "sometimes violently" actions of those opposed to the project is very enlightening of your viewpoints and political philosophy. There were no incidents of "violence" documented concerning any of the meetings. If there were, I am sure that the local newspaper would have printed them. Historically, the sheriff's office has provided uniformed deputies at all Board of Supervisor's meetings and many Planning Commission and MAC meetings, especially those concerning hotly contested proposed developments. This was done precisely to prevent "mob rule" and acts of violence. Heated discussion has been the hallmark of representative democracy in our country.

One could say that your definition of "mob rule" is just the local citizens' response to the perceived preference sometimes given to developers by the political bodies for the perceived benefits of sales tax dollars.

I personally would not object to a limited development of the proposed site, limited to the front area fronting Highway 49. The area from the canal traversing the rear part of the property adjoining Canal Street seems to be unfit for development. Access to Canal Street should be limited to emergency vehicle access only. I welcome a large sound wall, even though they usually have an ugly appearance and many of us would have to look at it daily as we egress the subdivisions. If a secondary access point is required for development, then I would recommend an over/underpass at the railroad tracks onto New Airport Road would be more appropriate. It would provide even more "temporary" construction jobs and probably be about the same engineering problem as covering over or piping the canal running through the property.

It seems very unwise to try to push through this development through without a firm commitment from an "anchor tenant". It seems that all you want is a blank ticket approval to build a huge vanilla shell and then hope some retail establishment will agree to lease/buy it. Again, this is the perception your paid advertisement presented. After 28 plus years in law enforcement, I can tell you that perception is reality to most people.

David A Rose, Lt. Retired, Placer County Sheriff's Office roseconsulting@wavecable.com

Kathi Heckert

From: Gerry Haas
Sent: Monday, April 05, 2010 11:07 AM
To: Kathi Heckert
Subject: FW: Auburn Journal Paid Advertisement

Another Bohemia comment.

Gerry Haas, Associate Planner
Placer County CDRA
530.745.3084
ghaas@placer.ca.gov

-----Original Message-----

From: Maywan Krach
Sent: Monday, April 05, 2010 8:52 AM
To: Gerry Haas
Subject: FW: Auburn Journal Paid Advertisement

Gerry, this comment letter did not address the Bohemia DEIR. I'm forwarding it to you for record and/or response. ECS will not enter this email in our file unless otherwise instructed.

Thanks,
Maywan
530-745-3132

-----Original Message-----

From: Kathleen Rose [<mailto:katrose@wavecable.com>]
Sent: Saturday, April 03, 2010 8:53 PM
To: scavolt@gmail.com
Cc: Placer County Environmental Coordination Services
Subject: Auburn Journal Paid Advertisement

Yes, it was a paid advertisement. I am compelled to respond to your full page of biased comments on a subject that is very important to many real people. I do like the format you chose. It was very organized and spoke to each of your points.

What I found totally offensive was the overall condescending tone of your piece. I was wondering WHO you were to write such a piece, and then it became clear that you are a PAID antagonist. Overall the piece was a slap in the face to any red blooded american that has an opinion other than yours. Was it your intent to persuade anyone or to be completely inflammatory. It felt much like a bully in an alley.

We purchased our home on Erin Drive in 1986. According to your history dateline the mill was closed for two years, but still there. We had no reason to think that it would ever be a RETAIL PROJECT. Over the years there may have been talk about development, but it was never given much attention. Meetings are typically during the day when most of us in the neighborhood are at work.

Your reference to Personal responsibility was more than insulting. There are two major neighborhoods that are involved with this area. Yes, these are neighborhoods. We are all neighbors. We are friendly and helpful. It is also a very pedestrian place. On any day and most daylight hours you will find people strolling, walking with their families, walking

their pets, or jogging by. It is very peaceful and lovely. The families that live here have been around for many years. This is a neighborhood where families come and raise their children and grandchildren. This place is our home.

Probably the most insulting was your referring to us as a mob. I can not believe that you would think that you could win any support with all the name calling and sarcasm. Calling concerned neighbors a "mob", shame on you.

You continued to quote untrue facts. ie. the number of homes that would be affected, the number of cars that would be on Canal st. etc.
Have you had any experience on Canal street? It is difficult now to turn onto Canal off of Luther Rd. or onto Luther Rd. off of Canal. Any more cars would be a true problem for all of us that live in these two neighborhoods.

You talk about this being for the greater good of all in the community. We are the community. The Placer co. Board of Supervisors are our representatives and are supposed to be looking out for US. Auburn has grown and grown and enough is enough. To put a retail project here would be negligent in this economy. We have many empty buildings and many businesses that are no longer. The only good to come from this would be to Mr. Conkey and you.

I do not say that Mr. Conkey does not have a right to develop on his property. I would hope that he would do the right thing and look out for the impact on the surrounding areas. Be community minded mean caring about people.

While I would like to have less BIG growth, I would not be totally opposed to a store being built that faced Hwy 49 and had no part in the section between Canal street and the running canal that is in that field. That would leave a big buffer between the store and the people. A sound wall with NO ACCESS to Canal street would be the only agreeable solution. Build if you may, but stay off of Canal Street.

I do not think that you have read this. I do not think that you care what I have to say. I have said it anyway.

I must note your use of exclamation marks. I was tempted to count them, but gave up and decided to declare you as the "king of Exclamations". You are obviously impassioned with the success of your boss. I am sure your profit will be great.

[illegible]

Kathi Heckert

From: Gerry Haas
Sent: Monday, April 05, 2010 11:07 AM
To: Kathi Heckert
Subject: FW: Bohemia Project

NO REPLY COMMENT

Gerry Haas
Placer County Environmental Services
500 E. 1st St., Suite 200
Auburn, CA 95603
530-745-3130

ghaas@placer.ca.gov

From: Maywan Krach
Sent: Monday, April 05, 2010 8:51 AM
To: Gerry Haas
Subject: FW: Bohemia Project

Sorry this comment letter did not address the DEIR. I'm forwarding it to you for record and response. ECS will not enter this into its public file unit as otherwise instructed.

Maywan Krach
530-745-3130

From: Charlie & Pam Nickrenz [mailto:nickrenz@gmail.com]
Sent: Saturday, April 03, 2010 1:41 PM
To: Placer County Environmental Coordination Services
Subject: Bohemia Project

Dear Maywan Krach:

My understanding is the Bohemia Retail Project big box store will be occupied by Walmart, as a legal document was presented to the Planning Commission by one of the citizens during the meeting on February 25, 2010. Walmart is notorious for closing small and locally owned businesses in communities which employ citizens and support the health of the community. Walmart is also known for treating their employees unjustly, paying low wages and no health benefits. My question is, how can the poverty level jobs that Walmart will offer benefit Auburn and justify losing the locally owned businesses and their employees?

The company I work for is moving from Auburn to Roseville because Auburn does not have fiber-optics for internet speed. Why isn't the Planning Commission focusing on maintaining a competitive market for the businesses that are in Auburn and why aren't we offering space in areas of Auburn, that are not in the backyard of a residential area, at competitive prices to entice businesses who pay decent wages to move into this area?

Please respond to my questions by return email: nickrenz@gmail.com or by letter to: Pam Nickrenz, 12345 Krista Lane, Auburn, CA, 95603.

Thank you,
Pam Nickrenz

April 18, 2010

Placer County Planning Commission
3091 County Center Drive
Auburn, CA 95603

RECEIVED

APR 20 2010

CDRA

✓ M. Curtis Zollner
12460 Erin Drive
Auburn, CA 95603

RE: Bohemia Project Traffic

Dear Commissioners,

Having lived on Erin Drive for approximately 19 years I have gone through the throws of change with the vacant land directly below me and the traffic in the area. While growth causes increases in building and traffic, it should not do so without some careful planning and restraint. The increase in traffic in a family subdivision from allowing an entrance to a "Big Box" store directly from that subdivision will be a danger to the families and the children who live in that subdivision. The streets in that subdivision, specifically Canal, Erin, Hyde Park, and Oak Ridge, were not made to handle a twenty or thirty fold increase in traffic. In fact some of those streets are too narrow for the current volume of traffic.

I have been told that a secondary entrance/exit to the "Big Box" project will be required by the emergency services organizations. If another entrance/exit is required, please put that entrance/exit on a road that is not in a family subdivision. If the entrance/exit is only for emergency use, it would not have to be built to withstand even moderate traffic. My suggestions for such an entrance/exit would be from New Airport Road, or Luther Road, or even from Hwy. 49 itself. All of which have excellent access to Hwy. 49.

Please consider my warning and suggestions carefully. The lives you save, and the resulting law suits you prevent, from major traffic accidents, should outweigh any other consideration in this matter.

Sincerely,



M. Curtis Zollner

cc: Gerry Haas

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Placer County Planning Commission
3091 County Center Drive
Auburn, Ca. 95603

RECEIVED

APR 21 2010

CDRA

Re: Bohemia Project

To the Placer County Planning Commission:

Regarding traffic planning for this proposed project, I have some questions.....The present roadway known as Canal St. is inadequate for the proposed and indicated traffic travel numbers. Neither widening nor resurfacing of Canal St nor Luther Road have been addressed. What is the intent of the county on our behalf, those who live in close proximity to this proposed project?

What will be the positioning of the main building in regard to the closeness to our homes?

Where will the "main" entrance into this shopping area be? Where will the secondary entrance be? And where will the "emergency equipment" entrance be?

There are many items left unaddressed by the Placer County Planning Commission. I believe that it is time to address the issues of the concerned citizens.

Thank You.

Respectfully,

Jean H. Thomas

Jean H. Thomas
12460 Erin Dr.
Auburn, Ca. 95603

CC: Gerry Haas

200

7 Cari Dawson-Bartley
12856 Erin Drive
Auburn, CA 95603

Placer County Planning Commission
3091 County Center Drive
Auburn, CA 95603

April 22, 2010

Delivered by Hand

To Whom It May Concern:

The Bohemia Retail Project, currently proposed as a superstore or club store, fails to comply with a number of important goals and policies contained in the Auburn/Bowman Community Plan.

It fails to encourage compatibility between neighboring land uses. It fails to maintain the character of established residential areas. It fails to protect what is now an open space. It fails to protect existing native vegetation. It fails to retain natural features as buffers between different uses. It fails insofar as the height and scale of the proposed building are not compatible with that of the surrounding residential development. It fails to place significant parking in either the rear or the side of the building. And it fails to adhere to Policy Q under "Specific Policies for Commercial" to "encourage the development of professional offices and similar low intensity commercial uses, as a buffer between retail commercial areas and adjoining residential developments."

Because of these deficiencies, I request that the proposal be rejected or significantly revised.

I also have concerns about the validity of the socio-economic projections in Section 16 of the Bohemia Retail Project Draft EIR.

As stated on page 16-5, the projections of retail growth were based on trends established between the years 2000 and 2006. Our country has been in a recession since that time, and it seems likely that these trends are no longer valid. In fact, the trend may be downward instead of upward in some cases.

Furthermore, the projections of population growth from the California Department of Finance, is from a study published in July of 2007. It is likely that these projections are no longer valid given the change in the economy over the past several years because population growth is often tied to economic growth.

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Beyond that, the rate of population growth cited is county-wide and not applicable to Auburn. Lincoln, Roseville and Rocklin saw enormous growth a few years ago while Auburn did not. The numbers are skewed in favor of the developer.

The study subtracts a small amount in the growth rate for Auburn, but the growth rate used in projections (1.8%) is still more than double the growth rate experienced between 2000 and 2010.

With all of these deficiencies, the rest of the studies involving supply and demand – and the ability of the local economy to recover from the impact of a superstore or club store – are overly optimistic and therefore invalid.

The county should perform its due diligence and demand a revision to all of the socio-economic data.

Yours truly,

Cari Dawson-Bartley



Law Offices of
Joseph H. Marman, Esq.
 8421 Auburn Blvd., Suite 145
 Citrus Heights, CA 95610-0394



Attorney at Law

E-mail: marmanla@localnet.com

(916) 721-3324

Fax (916) 721-3633

Member: California Consumer Attorneys, Capitol City Trial Lawyers Association, Sacramento County Bar Assn., Placer County Bar Assn.

April 27, 2010

Supervisor F. C. "Rocky" Rockholm

Supervisor Robert Weygandt

Supervisor Jim Holmes

Supervisor Kirk Uhler

Supervisor Jennifer Montgomery

175 Fulweiler Avenue

Auburn, CA 95603

RECEIVED
APR 28 2010
 CLERK OF THE
 BOARD OF SUPERVISORS

RECEIVED			
BOARD OF SUPERVISORS			
51805 Rec'd	X	MB	DW
Other	X	TS	COB X
APR 28 2010			
Sup D1	Sup D4	Aide D1	Aide D4
Sup D2	Sup D5	Aide D2	Aide D5
Sup D3		Aide D3	X * X

Michael Johnson

Re: Bohemia Development Project – Highway 49 and Luther Road

Dear Members of the Board of Supervisors:

I am a resident of the local neighborhood behind Highway 49 and I gain access to my home through Canal Street, off of Luther Road. I am also a member of APACE, the Alliance for the Protection of the Auburn Community Environment.

* Our local residents are strongly opposed to the approval of the Bohemia Project proposed by Jim Conkey. This is the wrong project for this small site, which is too big and is not appropriate for the area. The proposed back road access through Canal Street would destroy not only the little street, it would also destroy the neighborhood in many ways, which includes noise, traffic, accidents with children playing in the neighborhood and adjacent to the Fiddler Green swimming pool and basketball court park at Canal and Erin streets.

We have also learned that many of the Supervisors may have had or now has any financial connections with the developer, Jim Conkey. We believe that it would constitute a **conflict of interest** and an **ethical violation** if any of the Supervisors would remain on the panel to vote for approval of this Bohemia project, because of the prior favorable financial ties with Mr. Conkey.

We are asking each of you to disclose to us, the nature and extent of any financial dealings any of you Supervisors have had with Mr. Conkey in the past ten years. We are also asking whether each of you that have had financial relationships, plan on recusing yourself from the vote on the approval or denial of the Bohemia Project.

Joseph H. Marman

203

United States Senate

HART SENATE OFFICE BUILDING
SUITE 112
WASHINGTON, DC 20510-0505
(202) 224-3553
<http://boxer.senate.gov/contact>

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MAY 07 2010

**CLERK OF THE
BOARD OF SUPERVISORS**

DATE 5/7/10
☐ Board of Supervisors - 5
☐ County Executive Office
☐ County Counsel
☐ Mike Boyle
☒ Planning via email

April 26, 2010

Ms. Suzanne H. Peterson
12911 Erin Drive
Auburn, California 95603

Dear Ms. Peterson:

I am writing to acknowledge your letter to Senator Boxer. I apologize for the delay in responding to your request for assistance.

I sympathize with your concern and understand your desire to have this matter resolved. However, the issue you have outlined appears to fall under the jurisdiction of Placer County. Therefore, I am forwarding your correspondence to your County Supervisor, Jim Holmes, for his review and consideration.

Thank you for writing. Do not hesitate to contact Senator Boxer in the future should you require assistance with a matter concerning the federal government.

Sincerely,



Eric José Vizcaino
Director of Constituent Services

EJV:rp
cc: Hon. Jim Holmes

RECEIVED			
BOARD OF SUPERVISORS			
5 BOS Rec'd	<input checked="" type="checkbox"/> AIB	<input checked="" type="checkbox"/> DW	
Other	<input checked="" type="checkbox"/> TS	<input checked="" type="checkbox"/> COB	
MAY - 6 2010			
Sup D1	Sup D2	Aide D1	Aide D2
Sup D3	Sup D4	Aide D3	Aide D4
		<input checked="" type="checkbox"/> *	<input checked="" type="checkbox"/> *

1700 MONTGOMERY STREET
SUITE 240
SAN FRANCISCO, CA 94111
(415) 403-0100

312 NORTH SPRING STREET
SUITE 1748
LOS ANGELES, CA 90012
(213) 894-5000

501 'I' STREET
SUITE 7-600
SACRAMENTO, CA 95814
(916) 448-2787

2500 TULARE STREET
SUITE 5290
FRESNO, CA 93721
(559) 497-5109

600 'B' STREET
SUITE 2240
SAN DIEGO, CA 92101
(619) 239-3884

201 NORTH 'E' STREET
SUITE 210
SAN BERNARDINO, CA 92401
(909) 888-8525

204

Robert J. & Suzanne H. Peterson
12911 Erin Dr.
Auburn, CA 95603

March 3, 2010

Senator Barbara Boxer
Sacramento District Office
Sacramento, California
FAX 202-228-3865

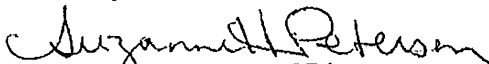
RE: Bohemia Retail Project (PEIR T20080235 / State Clearinghouse #2001042086)

Please help our rural community of North Auburn. Our Placer County supervisors are about to approve a project, which we stopped nearly 15 years ago, that will jeopardize our quality of life and the environment. This proposed monstrosity will have overwhelming negative impacts on traffic safety and traffic flow, air pollution, water quality, noise levels, light pollution, flood control, residential and commercial real estate, crime levels, small businesses, and the natural species that inhabit the land and surrounding areas. Building a big box store in an established residential neighborhood with an entrance on a narrow, deteriorating road with open canals on both sides, which already floods frequently, is unfathomable and just irresponsible.

The developer has a history of questionable influence over our local government officials. He has close business ties with one of the five county supervisors.

Please carefully review the Bohemia Retail Project (referenced in my attached letter) as registered with the Placer County Planning Commission. The conclusions in The Environmental Impact Review and Traffic Study by Caltrans are dangerously flawed.

Sincerely,


Suzanne H. Peterson, CPA

03/03/2010 6:20PM

205

Robert J. & Suzanne H. Peterson
12911 Erin Dr.
Auburn, CA 95603

certain times of the year no matter how high or where it is positioned. It will also cause traffic to back up clear down to 49 on this short section of Luther Road. Traffic will back up on Canal street as cars attempt to turn onto Luther. Placing an entrance/exit on Canal Street into and out of the Big Box store's parking lot would only exacerbate the situation to the point of being intolerable.

The Bohemia Project will negatively impact our healthful and peaceful existence in our rural community. The home values will decrease dramatically as the desirability to live in this area will diminish. The completion of this project would greatly reduce our quality of life.

Please do not allow the Bohemia Retail Project to proceed. Thank you for considering the health and welfare of the citizens who live in Auburn, Placer County.

Sincerely,

Suzanne H. Peterson, CPA

Robert J. Peterson, Jr.

From: yan.blossm@gmail.com on behalf of Valerie M. Collins [valerie.collins@sent.com]
Sent: Friday, May 07, 2010 11:44 AM
To: Placer County Board of Supervisors
Subject: Bohemia Retail Project

My husband and I received mailings today from the anti-WalMart crowd. My view is that NO BUSY RETAILER should be at that location, due to the very dangerous changes already made that created a speedway when turning left onto Luther Road southbound from Hwy 49. It is an abomination, and has already adversely affected desirability of homes in that area. However, the issue seems to be whether we will allow a WalMart to come to Auburn. I believe WalMart is the best choice among the options I have heard about - I only wish it would be put in another location. Home Depot was put in a very good location. These anti-WalMart people like to say that the store will hurt local businesses. As loud as these people are, it makes me wonder just who will be shopping at WalMart. Are they afraid that they won't be able to resist the pull of that store? Do they already leave town to shop? Did they oppose Target and now shop there weekly? We shop at Target no more than once a month (usually less), but we did not oppose it coming to Auburn. We do not currently shop at WalMart, as we believe in working and shopping where we live. Auburn is a nice place to live, but it is very difficult to shop here all the time for certain things due to lack of availability or because of predatory prices by certain local businesses. We handle this by shopping online and not paying sales tax and shipping, because we are not going to waste money on gas to go visit cities that we don't like to spend money. The few excellent local businesses we do business with do not compete with WalMart - they do not sell the same items, and other versions don't work for us. In today's economic climate, we should pay attention to WalMart's motto - "Save Money, Live Better". That is wisdom. I am also aware that WalMart purchases produce from local organic farmers and sells it at the same price as regular produce. That is a good thing.

The worst things about WalMart coming to Auburn are the location, and its combination with another problem we already have. Auburn's "ghetto" begins at the alley between Bel-Air shopping center and K-Mart shopping center. Auburn Greens is where the ghetto-dwellers mostly live, and if any big retailer comes to the Bohemia site, those people will be coming further southbound. I don't see that as a good thing.

Valerie M. Collins

--

Note: No trees were killed in the sending of this message, but a large number of electrons were terribly inconvenienced

Nothing compares to FastMail -
<http://www.fastmail.fm/?STKI=352289>

Prefer Switzerland?
<https://secure.swissmail.org/Generalmail/swissmail/introduction/introduction.asp?br=126518>

5/10/2010

207

From: Lucretia [lucretianeill04@sbcglobal.net]
Sent: Saturday, May 08, 2010 9:10 AM
To: Placer County Board of Supervisors
Subject: Wal-Mart in Auburn

Dear Placer County Board of Supervisors;

I am one of many residents in Placer County that is totally in favor of a Wal-Mart going in in Auburn. I have been a resident of Placer County for over 50 years. I have worked, raised my children and paid taxes in Placer County.

Daily I drive by the property on the corner of Hwy 49 and Luther Road to look at a bunch of new Empty buildings. I think to myself that even with the bad economy, if Wal-Mart had been allowed to go in at that location there would be people shopping. There would be many jobs and revenue for Placer County. There would be people spending money at Wal-mart and the surrounding businesses instead of driving right through Auburn to do their shopping in Roseville. That would include people from all the outlying areas like Grass Valley and up I-80 to Truckee. I live less than a mile from that location and I go to Roseville/Rocklin I do the majority of my shopping with the exception of groceries.

Thank You, for at least allowing a Home Depot to move in because that was another trip to Roseville for me.

As for the increased traffic - well I don't believe it would be as bad as most people think. There are ways to manage more traffic. Auburn needs the jobs and the taxes that would come with Wal-Mart. As I said, I live less than a mile from this location and do not see a major traffic problem. The same people that drive down Hwy 49 through Auburn would be stopping and spending.

Wake up..... we can't keep Auburn a sleepy little town.

Sincerely,

Lucretia Neill
1351 Martin Drive
Auburn, CA 95603

5/10/2010

208

From: virginia ayala [grandin46@yahoo.com]
Sent: Saturday, May 08, 2010 10:40 AM
To: Placer County Board of Supervisors
Subject: walmart

We would like to go on record as enthusiastic supporters of having a walmart in Auburn. Detractors are concerned about loss to local business. We see it as revenue that is going to Roseville.

Auburn needs to get in touch with consumer needs. We need places where our dollars will go the farthest. I'm sure most of you know people who make the weekly or monthly trip to Roseville to get the MUCH better prices offered at WalMart, Cosco and Winco.

Lets keep these dollars in Auburn

Virginia and Richard Ayala,
Auburn, CA

From: Grant D. Henderson [papa14@earthlink.net]
Sent: Sunday, May 09, 2010 8:07 AM
To: Placer County Board of Supervisors
Subject: NO TO WAL-MART

Gentlemen;

The proposed Wal-Mart project in Auburn is nothing more than a VERY BAD IDEA!

Its projected location would seriously and negatively affect traffic volume along Hwy 49, Luther Road and connecting routes which are already at maximum capacity!

Auburn has been steadily improving its cultural image over the many years I've lived here. A Wal-Mart store would not only compete with local business to their demise, but cater to a demographic population that would NOT enhance the image of Auburn!!

It is my belief that a Planning Commission's primary duty is to make intelligent decisions that enhance a community... not degrade a community. A Wal-Mart store would do nothing to improve Auburn and would eventually destroy existing property values and community!

Please DO NOT approve this nightmare of a proposal!

Thank you,

Grant Henderson

5/10/2010

2/0

From: Kevin Quinn [kquinn@hughes.net]
Sent: Sunday, May 09, 2010 9:40 AM
To: Placer County Board of Supervisors
Subject: Bohemia project

I support your opposition of the Bohemia project.
I see this project only as a threat to our local economy, local businesses, and environment.
I strongly disagree with the development of a Wal-Mart in Auburn and will support the project being cancelled.

Thank you

5/10/2010

2/1

From: Gary Ransom [flyers@megansmarketing.com]
Sent: Sunday, May 09, 2010 6:25 PM
To: Placer County Board of Supervisors
Subject: Wal-Mart

I can't for the life of me see why our community (of Auburn) will be improved by a Wal-Mart here. It can't be about tax revenue as I believe it is a "zero sum game" with existing merchants loosing as much revenue as Wal-Mart will gain. Gary Ransom, 165 Terrace St., Auburn.

From: Grant D. Henderson [grant@h-gdesign.com]
Sent: Monday, May 10, 2010 7:00 AM
To: Placer County Board of Supervisors
Subject: NO TO WAL-MART

The Wal-Mart proposal for Auburn is extremely disturbing!! Such a store of 'its' type would do nothing to enhance Auburn and only destroy local businesses and contribute to excessive traffic problems and increased pollution.

Auburn is in the midst of improving its image through upgrades to downtown Auburn and surrounding areas. The Wal-Mart proposal is not consistent with the Auburn-Bowman Community Plan and would move Auburn in the WRONG direction significantly detracting from any improvements aimed at enhancing the community.

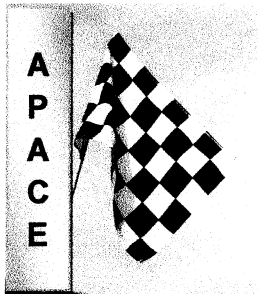
Please DO NOT approve the Wal-Mart proposal. It's a VERY, VERY bad concept!!!

Thank you...

9

5/10/2010

2/3



ALLIANCE for the PROTECTION of our
AUBURN COMMUNITY ENVIRONMENT
P.O. BOX 4951
AUBURN, CALIFORNIA 95604-4951

e-mailed
to DRC
5/12/10 lva

NOUS GAGNONS

Date: May 11, 2010

RECEIVED

MAY 11 2010

CDRA

To: Mr. Gerry Haas, Planner
County of Placer Community Development Resource Agency

Subj.: Bohemia Retail Project EIR; Recirculation of

Dear Sir,

On April 28 of this year, Mr. Cavolt - Project Coordinator of Bohemia Properties – announced that a ‘follow-up traffic study’ has been commissioned. He states that the Placer County Public Works Department and Caltrans have viewed and approved the new and revised ‘Transportation and Circulation’ Chapter of the DEIR.

This is a major revision that will substantially affect previously identified significant impacts.

On behalf of the citizens of Placer County, I respectfully request that Placer County Transportation Planning Agency proceed in compliance with standard practices (*CEQA Guidelines Section 15088.5*) for the new and revised version of the Bohemia Retail Project EIR.

Recirculation of the EIR is necessary to provide persons with sufficient information in order to make meaningful responses as to the scope and content of the EIR.

- Issue the ‘Notice of Preparation’, the scoping meeting date and the comment period.
- Issue the Notice of Availability of the Draft EIR For Public Review.
- Make copies of the Draft EIR available for review.
- Announce the Review Period, Hearing dates and end date for submitting public comments.

Sincerely,

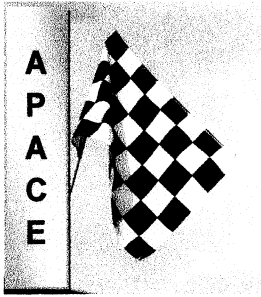
Lee Lively
1702 Tracy Lane; Auburn, CA 95603

CC: Placer County Board of Supervisors
Placer County Planning Commission

Mission Statement:

To strengthen our community’s economic vitality while preserving the charm of our Auburn community. We oppose commercial development that result in increased economic blight, increased negative environmental effects and the decline in quality of life

2/4



ALLIANCE for the PROTECTION of our
AUBURN COMMUNITY ENVIRONMENT
P.O. BOX 4951
AUBURN, CALIFORNIA 95604-4951

NOUS GAGNONS

Date: May 13, 2010

To: County of Placer Planning Commission

Subj.: Bohemia Retail Project EIR; Recirculation of

Recently, the developer announced that a 'follow-up traffic study' has been approved by Caltrans.


That could only have occurred as a result of a reduction in the projected vehicle trips to the project. As you know, traffic analysis involves estimates and projections input into any one or a combination of many models. Like all models, it is a simple matter to change a few parameters and arrive at a desired result.

Nevertheless, this revision of the Transportation and Circulation Chapter and other related chapters represent a major revision that will substantially affect previously identified significant impacts. It is not, as our county planner claims, 'merely additional information.'

On behalf of the citizens of Placer County, I respectfully request that Placer County Transportation Planning Agency proceed in compliance with standard practices for the new and revised version of the Bohemia Retail Project EIR. Re-circulate the EIR in accordance with *CEQA Guidelines Section 15088.5*.

Recirculation of the EIR is necessary to provide persons with sufficient information to make meaningful responses as to the scope and content..

Sincerely,


Lee Lively
1702 Tracy Lane; Auburn, CA 95603

PLACER COUNTY
DATE RECEIVED
MAY 13 2010

PLANNING COMMISSION

CC: County of Placer Board of Supervisors
North Auburn Municipal Advisory Council

Lee Lively
Spoke @ public comment
section of PC Hearing
(original in file)

Mission Statement:

To strengthen our community's economic vitality while preserving the charm of our Auburn community. We oppose commercial development that result in increased economic blight, increased negative environmental effects and the decline in quality of life

2/5

on
e-mail
RECEIVED

MAY 24 2010

From: Daniel Labrador [labrador_370@hotmail.com]

CLERK OF THE
BOARD OF SUPERVISORS

Sent: Thursday, May 20, 2010 10:27 PM

To: Placer County Board of Supervisors

Subject: walmart

DON'T BUILD IT LEAVE AUBURN HOW IT IS LET IT SHINE AND SHOW OFF ITS 49ER GOLD RUSH
HISTORY WAL*MART WILL ONLY BREAK DOWN AUBURN AND MAKE IT INTO ANOTHER NOTCH ON
THE 'OL BELT

LABRADOR

The New Busy is not the old busy. Search, chat and e-mail from your inbox. Get started.

3208 rec'd MB
COB
RA

5/24/2010

3 2/6

on e-list
RECEIVED

MAY 24 2010

CLERK OF THE
BOARD OF SUPERVISORS

From: Norm Hinman [normh@insightful.net]
Sent: Sunday, May 23, 2010 10:52 AM
To: Placer County Board of Supervisors
Subject: Bohemia Project

To Placer County Supervisors,

As a voter in Auburn, I wish to express my opposition to the Bohemia project 'Big Box Store' near highway 49 and Luther. It is my opinion that we already have enough big box and grocery stores along highway 49 and that this added large facility will only increase traffic on the congested highway 49 corridor and will put further pressure on our local businesses. Downtown Roseville is a good example of what happens when the corporate sharks gut local businesses.

Don't promote further erosion in Auburn. If we want to shop at big box stores, Roseville is only 13 miles away and has them all.

I will be out of town on May 27th, so please take my wishes into account as if I were there at the 5/27 Planning Commission meeting.

I will be tracking your actions on this important decision.

Sincerely,

Norman F. Hinman
190 Del Monte Way
Auburn, CA 95603
Day phone: 916.774.5408

8:05:00d

MB
COB
RA

2/17

5

5/24/2010

on e-mail

RECEIVED

MAY 24 2010

CLERK OF THE
BOARD OF SUPERVISORS

From: Tyler Pearson [tpearson13@hotmail.com]

Sent: Saturday, May 22, 2010 4:17 PM

To: Placer County Board of Supervisors

NO WALMART IN AUBURN!!!

Hotmail is redefining busy with tools for the New Busy. Get more from your inbox. [See how.](#)

5:50S rec'd

MB
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2/8

4

5/24/2010

on
e-list

RECEIVED
MAY 24 2010

CLERK OF THE
BOARD OF SUPERVISORS

From: Maureen Wilson [maureenwilson08@yahoo.com]
Sent: Sunday, May 23, 2010 7:29 PM
To: Placer County Board of Supervisors
Subject: No to Wal-Mart

Dear Supervisors,

I urge you to deny Wal-Mart the opportunity to build a store in Auburn. We already have Target, Best Buy, K-Mart, two CVS pharmacies, Walgreen's, and several grocery stores. We don't need a big box store to compete with our local businesses and add more traffic to already-congested Highway 49.

Thank you,
Maureen Wilson
105 Meadowlark Ct.
Auburn, CA 95603

65003 sold MB
COB
RA

219
Q

on
e-list

RECEIVED

MAY 24 2010

CLERK OF THE
BOARD OF SUPERVISORS

From: John Dijkstra [john_dijkstra101@hotmail.com]

Sent: Monday, May 17, 2010 7:53 PM

To: Placer County Board of Supervisors

Subject: Walmart in Auburn

Many people move to Auburn because it is a mall town. Please do not let this city turn into Roseville. If Walmart goes in, it will take even more money away from small businesses and make many local residents angry.

Cheers,

-John

The New Busy think 9 to 5 is a cute idea. Combine multiple calendars with Hotmail. Get busy.

8 308 1900

MB
COB
RA

220
2

On e-list

RECEIVED

MAY 24 2010

From: JoniC789@aol.com
Sent: Monday, May 17, 2010 12:11 PM
To: Placer County Board of Supervisors
Subject: RE: WallMart

CLERK OF THE
BOARD OF SUPERVISORS

To the Board of Supervisors, Wake Up People ! We don't want to put more local business out of business ! Say and do what's right. Say "NO" to Wall mart. Do what's right for us our community and Wallmart is not a good thing. No Wall Mart in Auburn ,for Gods Sake, just say "No". Save Auburn from this distruction that's happened in countless places in the U.S. I have seen Wallmart kill too many business, in too many places. Joni Kooken, Auburn, Ca

5 BOS 15/10

MB
COB
RA

DATE 5/24/10

- ☒ Board of Supervisors - 5
- ☒ County Executive Office
- ☒ County Counsel
- ☒ Mike Boyle
- ☐ Planning/IA email

1 of 6

221

x

**ALLIANCE for the PROTECTION of our
AUBURN COMMUNITY ENVIRONMENT
P.O. BOX 4951
AUBURN, CALIFORNIA 95604-4951**

May 26, 2010

To: Members of the North Auburn MAC
Members of the Placer County Planning Commission
Members of Placer County Board of Supervisors
From: Victoria Connolly, member APACE ✓
Re: Wal-Mart / Big Box Development at Bohemia Site

Relative to the planned development at the Bohemia Site you have heard much about the environmental effects such as noise, pollution, and detrimental socio-economic effects. The EIR itself took into account that there would be business closings as a result of a supercenter being placed at the Bohemia site, but projected that there would be economic recovery in 5-10 years. This was based upon economic data through 2006, prior to the current recession.

As a member of APACE we are not creating concern from thin air, but from already well-researched data which I am attaching here for your information. To indicate the level of alarm and concern in the Auburn area, we are letting you know that within one week of setting up a Facebook page against the probable WalMart planned for this site, 459 members have signed on. We mostly do not know these citizens. We continue to believe this is a Wal-Mart, which we think should be separately analyzed from a planning perspective as a business killer, tax revenue killer and jobs killer, even though it is touted as exactly the opposite.

Attached are 4 pieces of information that should give you pause about approving or recommending approval of a supercenter at this site. Even if it is not a Wal-Mart, the scale and other environmental effects make this an inappropriate development for this site. Such a building of 155, 000 square feet belongs in a major retail corridor, which is not the designation of this area of North Auburn according to the Auburn Bowman Community Plan. Please consider that we don't have to reinvent the wheel here in Placer County. It has been well studied and the conclusions are starkly apparent to the public. We hope they will be apparent to our officials with power to control the development at this site. We are not opposed to mixed use development which was the preferred form of development at this site.

Cc: Gerry Haas, Placer County Planning Dept.
Attachments (4)

PLACER COUNTY
DATE RECEIVED
MAY 27 2010

PLANNING COMMISSION

222

Attachments:

- A. Tom Rivers: Four years after Wal-Mart, villages shed tax base-4-1-2010- 3 pages
- B. Facts in the Wal-Mart Documentary "Wal-Mart-The High Cost of Low Price" citations and scholarly studies supporting assertions in the film 14 pages
- C. Compilation of studies, information, articles etc. from the Big Box Collaborative 11 pages
- D. Certified for Partial Publication from the Court of Appeal of the State Of California Firth Appellate District: Bakersfield Citizens for Local Control v. City of Bakersfield and Panama 99 Properties LLC- notes And remands back for further EIR study due to inadequate assessment of decay, blight and other socio-economic issues. 47 pages

Tom Rivers: Four years after Wal-Mart, villages shed tax base

Published: Thursday, April 1, 2010 10:36 AM EDT

The marching band showed up. So did a local pastor, who thanked God for sending Wal-Mart to Albion. They were part of a celebration in June 2006, when Wal-Mart opened a 155,000-square-foot Supercenter in Albion.

I was dubious and I was worried. I knew the store, despite its best efforts and intentions, would cripple many of the small-business owners in Orleans County. A mammoth store with probably more shelf space than all of downtown Albion and Medina simply couldn't be absorbed into a shrinking local economy without hurting many other businesses.

I had already witnessed the slow demise of the villages, the carving up of many glorious homes into apartments, and the shuttered storefronts and factories.

I live in Albion, and I had watched village officials for years wrestle with declining tax assessments, while trying to maintain police protection and other services. The dwindling tax base forced village property owners to pay higher taxes. It was truly a vicious cycle, with bigger tax bills pushing more village residents into the less costly country, leaving fewer people to pay even more taxes.

Now, almost four years after Wal-Mart opened, there is evidence about the store's devastation of the village tax bases. The villages are suffering, with independent grocery stores gone, and their hulking buildings a shadow of their former assessments.

Sure, it's been a slow economy and the stores would have felt that in their bottom lines. But there's no denying Wal-Mart, with its sheer immensity, has sucked too many sales out of the local economy.

One of the Albion's Main Street mainstays, Dale's Market, closed in early 2007, eight months after Wal-Mart opened. Before the Supercenter, Dale's was assessed at \$950,000. That dropped to \$624,700 in 2008, \$525,000 last year and will soon be at zero because the 34,000-square-foot building has been demolished to make way for a new community library.

Tops opened a new store in the village of Albion about three years before Wal-Mart arrived. Albion already had two grocery stores before Tops. The new one wasn't needed but I'll give Tops some credit for locating in the village, staying closer to the population base and taking on the village's higher taxes.

But business hasn't been brisk for Tops in Albion. The Tops site, which is actually owned by Benderson Development, was able to knock down its assessment from \$3,630,200 to the current \$2,750,000.

Holley and Medina weren't immune to the Supercenter. Both independently run Jubilee stores shut down before the end of 2006. The 21,156-square-foot Medina Jubilee was assessed for \$465,400 in 2007. It dropped to \$209,500 the following year and is now down to \$91,400. It's been empty for more than three years.

Tops in Medina also has felt the impact of Wal-Mart. Tops showed its revenue data to local assessors and was able to get its assessment reduced from \$4,114,500 in 2008 to \$3,901,300 a year later. It would have been a steeper decline but Tops added a gas station.

The Holley store at about 17,000 square feet found a savior in Sabir Khan, who runs a pharmacy next to the former grocery store. He paid \$300,000 for the building in 2007 and the site continues at that assessment, although it is mostly empty. When it was a grocery store, the Jubilee property was assessed for \$466,200.

The villages have few open spaces for new houses and development, so the big drops in assessed value from the stores is difficult to overcome. It means the remaining residents and businesses will bear a bigger burden in keeping afloat the police departments, fire companies, DPWs and other services.

Albion's overall tax base fell from \$143.82 million in 2007 to \$142.04 million a year later to the current \$141.88 million. That's the number the Village Board will use in crafting the 2009-10 budget.

It's a discouraging reality for Mayor Dean Theodorakos, who last year actually reduced taxes collected in the village, but saw the tax rate go up because of the declining assessment. The village's top need is investment, Theodorakos said, and it needs to come on all fronts, from housing to retail businesses to manufacturing.

Medina has been declining as well, dropping from \$166.13 million in 2007 to \$166.05 million in 2009. Mayor Adam Tabelski also said Medina needs investment.

Wal-Mart's defenders will praise the store for keeping more sales tax revenue in county, and for increasing the assessments in the town of Albion, the county and the Albion school district. Wal-Mart is assessed for \$6,975,000.

But the store was given a 50 percent exemption by the town and county, a tax break that loses 5 percentage points each succeeding year.

Wal-Mart is now paying taxes for a \$4,851,900 assessment. The site will be fully assessed in 2016. The store doesn't pay a nickel in taxes to the village, which is less than a mile away and supplies water and sewer services.

The villages could use help. Many of their businesses, even dominant ones for decades, have closed or are barely hanging on.

Wal-Mart trumpets its slogan, "Save Money. Live Better." But surveying the carcasses of former stores in Orleans County villages, the message rings hollow.

Tom Rivers is a Daily News staff writer. His column is published on alternate Thursdays.

"BREATH TAKING" "MESMERIZING" "TWO THUMBS UP!"

-Anita Gates, [NY Times](#)

-Andrew O'Hehir, [Salon.com](#)

-Ebert & Roeper

WAL-MART

THE HIGH COST OF LOW PRICE

ABOUT BUY DVD SCREENINGS ACTION

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Citation of Statistics Used in the Film

WAL-MART Drives Down Retail Wages \$3 BILLION Every Year

- "A recent study by researchers at UC Berkeley's Labor Center has quantified what happened to retail wages when Wal-Mart set up shop, drawing on 15 years of data on actual store openings. The study found that Wal-Mart drives down wages in urban areas, with an annual loss of at least \$3 billion dollars in earnings for retail workers."
- UPDATE: Since the completion of our film, the study has been finalized and published, and the published findings produced a different number for the annual loss in retail earnings than the preliminary figure we used in the film. The published study ultimately found that Wal-Mart actually reduced the take-home pay of retail workers by **\$4.7 BILLION** dollars annually. Unfortunately for the retail workers this statistic concerns, Wal-Mart's effect on retail wages turns out to be worse than we had anticipated.
- Source: Arindrajit Dube, "Impact of Wal-Mart Growth on Earnings throughout the Retail Sector in Urban and Rural Counties" [[PDF File](#)], UC Berkeley Labor Center, November 2005.

\$86 MILLION a Year to California Taxpayers

- In 2004, a study released the UC Berkeley Labor Center found that "reliance by Wal-Mart workers on public assistance programs in California comes at a cost to taxpayers of an estimated \$86 million annually; this is comprised of \$32 million in health related expenses and \$54 million in other assistance."
- Source: Ken Jacobs and Arindrajit Dube, "[Hidden Costs of Wal-Mart Jobs](#)" [[PDF file](#)], UC Berkeley Labor Center, August 2, 2004.
- Wal-Mart dismisses the findings of the UC Berkeley study, "Hidden Costs of Wal-Mart Jobs," as a "union hit piece." However, text from [Wal-Mart's own internal memo](#) substantially corroborates their findings.

An excerpt from the memo states:

"We also have a significant number of Associates and their children who receive health insurance through public-assistance programs. Five percent of our Associates are on Medicaid compared to an average for national employers of 4 percent. Twenty-seven percent of Associates' children are on such programs, compared to a national average of 22 percent (Exhibit 5). In total, 46 percent of Associates' children are either on Medicaid or are uninsured."

Source: [Wal-Mart Internal Memo](#) [[PDF File](#)], via New York Times

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- The researchers from the UC Berkeley Labor Center recently re-visited the situation, using Wal-Mart's own findings as a basis for their analysis. This is what they have found:

Applying Wal-Mart's reported percentages of workers and children enrolled in Medicaid/SCHIP implies Wal-Mart workers and children cost \$456 million to taxpayers nationally through their use of public health programs. This does not include the costs of adult dependents. (See Table 3)

Adding in the cost of adult dependents, the number approaches the original estimate reported in the Labor Center report.

- Also, the original report did not include costs to the public for Wal-Mart employees who are uninsured. Information from the Wal-Mart memo also points to the possibility of additional taxpayer costs incurred from uninsured employees, as analyzed by the Labor Center:

The memo further reports that 19% of Wal-Mart employees lack health insurance. The cost of uncompensated care for those workers adds an estimated \$202 million in taxpayer costs nationally, and \$10 million in California. These costs were not quantified in the original report (see Table 4).

Source: The updated analysis, with additional references to primary source material, can be found on the UC Berkeley Labor Center website (see: "[Internal Wal-Mart Memo Validates Findings of UC Berkeley Study](#)," November 2005)

- In addition to these new findings, a paper presented at the recent Wal-Mart sponsored conference by Michael J. Hicks of the Air Force Institute of Technology and Marshall University, finds that "Wal-Mart does increase Medicaid expenditures by roughly \$898 per worker, which is consistent with other studies of the Medicaid costs per low wage worker across the United States."
 - Source: Michael Hicks, "Does Wal-Mart Cause an Increase in Anti-Poverty Program Expenditures?" [[PDF File](#)], via Business Week, October 26, 2005.

HEALTHCARE STATISTICS

An up-to-date compilation of states' reporting of employers whose workers are enrolled in Medicaid or state health programs is being maintained by Good Jobs First, a non-profit research group based in Washington, DC. The film does not list all 15 states that report such data. Philip Mattera, research director for Good Jobs First, has also given testimony on this healthcare data before the Maryland Senate. That testimony can be found on the Good Jobs First website [[PDF file](#)].

ALABAMA: 3,864 Children of WAL-MART Employees are Enrolled in Medicaid

- "Retail giant Wal-Mart tops the list of companies in Alabama whose employees have children on Medicaid, the [Montgomery] Advertiser reported, citing state records. Wal-Mart workers' children account for 3,864 children on the Medicaid rolls at a cost between \$5.8 million and \$8.2 million."
- Source: Associated Press, "[Wal-Mart No. 1 in Employee Medicaid](#)," *The Decatur Daily*, February 23, 2005

ARIZONA: 2,700 WAL-MART Workers on Medicaid

- According to state data provided to Capitol Media Services and reported by the Arizona Daily Star, "Close to one of every 10 Wal-Mart employees is getting health insurance paid for by Arizona taxpayers, according to figures obtained Friday from the state...In the Arizona statistics, nearly 2,700 people listed their employer as Wal-Mart out of more than 28,000 company employees in the state...The numbers came as a surprise to state Sen. Richard Miranda, D-Phoenix, who tried earlier this year to get a law requiring the DES [Department of Economic Security] to disclose the employers of people on

AHCCCS. That measure was defeated amid opposition from corporate lobbyists, including Rip Wilson representing Wal-Mart."

- Source: Howard Fischer, "Wal-Mart 1st in State Aid Enrollees," *Arizona Daily Star*, July 30, 2005

ARKANSAS: 3971 WAL-MART Workers on Public Assistance

- "Nearly 10,000 workers with Arkansas' nine largest employers receive public welfare for themselves and their families, according to the state Department of Human Services. Wal-Mart Stores Inc., with 3,971 of its 45,106 employees on public assistance, topped the list."
- Source: Brian Baskin, "Top 9 Employers in State Have 9,698 Getting Public Aid," *Arkansas Democrat-Gazette*, March 17, 2005.

CONNECTICUT: 824 WAL-MART Workers Have Children in a State Health Care Program

- According to a report prepared by the Connecticut Office of Legislative Research examining enrollment data for the HUSKY (Healthcare for Uninsured Kids and Youth) program for children of low-income families, "The same employers account for the highest number of employed parents of HUSKY A [traditional Medicaid] and B [state CHIP] children. For example, Wal Mart employed the highest number of HUSKY A parents (824 in September 2004) and the second highest number of HUSKY B parents (79 in December 2004)."
- Source: Robin K. Cohen, "HUSKY A and B - Enrollment and Employer Data," *Connecticut Office of Legislative Research Report 2005-R-0017*, January 10, 2005.

FLORIDA: 12,300 WAL-MART Workers and their Dependents on Medicaid

- "Wal-Mart Corp., which is getting millions of dollars in state incentives to create jobs in Florida, has more employees and family members enrolled in Medicaid than any company in the state. ...The giant retailer, which has 91,000 full-time and part-time employees in Florida, has about 12,300 workers or dependents eligible for Medicaid, the growing health care program for the poor and the elderly...According to figures released Thursday by Florida's Department of Children and Families, Wal-Mart and four other large companies that receive state incentives have an estimated 29,900 employees or their family members enrolled in Medicaid...The figures suggest taxpayers may be double-subsidizing low-wage employment by paying companies to create jobs and by paying for the health care of some of those companies' employees."
- Source: Sydney P. Freedberg and Connie Humburg, "Lured Employers Now Tax Medicaid," *St. Petersburg Times*, March 25, 2005.

GEORGIA: 10,261 Children of WAL-MART Employees are Enrolled in PeachCare for Kids

- "A state survey found 10,261 of the 166,000 children covered by Georgia's Peach Care? for Kids health insurance in September 2002 had a parent working for Wal-Mart Stores...Wal-Mart is the state's largest private employer. But when the top four companies on the list are measured by number of PeachCare children per the number of employees in Georgia, Wal-Mart still dominates."
- Source: Andy Miller, "Wal-Mart Stands Out On Rolls Of PeachCare," *Atlanta Journal-Constitution*, February 27, 2004.

MASSACHUSETTS: 4,172 WAL-MART Workers and Dependents on State Health Care

- "Section 304 of Chapter 149 of the Acts of 2004 requires the Executive Office of Health and Human Services to produce a list of employers who have 50 or more employees using public health assistance each year." As a result, the Division of Health Care Finance and Policy, in collaboration with staff from the Office of Medicaid, compiled a report of employers who had 50 or more employees on MassHealth and the Uncompensated Care Pool (UCP). The report found that in 2004, Wal-Mart had 1,258 employees participating in UCP and 823 employees participating in MassHealth.

- Source: Executive Office of Health and Human Services Division of Health Care Finance and Policy, "[Employers Who Have 50 or More Employees Using Public Health Assistance](#)," February 1, 2005 (an additional data spreadsheet can be found [here](#))

TENNESSEE: 9,617 WAL-MART Workers on TennCare

- "Wal-Mart, with about 25 percent of the company's 37,000 workers on TennCare, tops the list of businesses with employees on the expanded Medicaid program. Wal-Mart is the state's largest private employer."
- Source: Associated Press, "[Study Shows Thousands of Wal-Mart Employees on TennCare](#)," WKRN-TV Nashville, January 20, 2005.

TEXAS: 4,363 Children of WAL-MART Employees on CHIP

- "The Center for Public Policy Priorities, a non-partisan research center based in Austin, has obtained data on the 20 employers in the state with the largest number of employees whose dependents participate in the Children's Health Insurance Program. (Employer data for Medicaid are not available.) The data for February 2005 show Wal-Mart at the top of the list, with 2,333 employee families in CHIP, with an estimated 4,363 individual children enrolled."
- Source: Good Jobs First [[PDF file](#)], with data provided by the [Center for Public Policy Priorities](#).

WISCONSIN: 1,252 WAL-MART Employees and Dependents on BadgerCare

- "The biggest employer of BadgerCare recipients was Wal-Mart, which had 809 of its employees and 443 of employee dependents enrolled in the state program in April. Providing health care for those 1,252 people costs Wisconsin about \$2.7 million a year; Wal-Mart turned a profit of \$10.3 billion in 2004."
- Source: Stacy Forster, "[Big Companies Fill BadgerCare Rolls](#)," *Milwaukee Journal Sentinel*, May 24, 2005

WAL-MART Costs Taxpayers \$1,557,000,000,00 to Support its Employees

- "The Democratic Staff of the Committee on Education and the Workforce estimates that one 200-person Wal-Mart store may result in a cost to federal taxpayers of \$420,750 per year - about \$2,103 per employee. Specifically, the low wages result in the following additional public costs being passed along to taxpayers:
 - \$36,000 a year for free and reduced lunches for just 50 qualifying Wal-Mart families.
 - \$42,000 a year for Section 8 housing assistance, assuming 3 percent of the store employees qualify for such assistance, at \$6,700 per family.
 - \$125,000 a year for federal tax credits and deductions for low-income families, assuming 50 employees are heads of household with a child and 50 are married with two children.
 - \$100,000 a year for the additional Title I expenses, assuming 50 Wal-Mart families qualify with an average of 2 children.
 - \$108,000 a year for the additional federal health care costs of moving into state children's health insurance programs (S-CHIP), assuming 30 employees with an average of two children qualify.
 - \$9,750 a year for the additional costs for low income energy assistance."
- The total figure is based on the average \$420,750 per-store figure, multiplied by 3700 (the approximate number of stores currently in the United States).
- Source: Rep. George Miller / Democratic Staff of the Committee on Education and the Workforce, "Everyday Low Wages: The Hidden Price We All Pay for Wal-Mart", February 16, 2004.

WAL-MART and Full Time Status

- In the film, a former Wal-Mart co-manager claims that store managers are told to "Keep the number of associates from being full time, as many as you can, keep many of them part time, as much as you can." A paragraph in a recently released internal memo from Wal-Mart corroborates the co-manager's statement:

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5. Capture savings from current initiatives to improve labor productivity. These initiatives include reducing the number of labor hours per store, **increasing the percentage of part-time Associates in stores**, and increasing the number of hours per Associate.

Source: Wal-Mart Internal Memo [PDF File], via New York Times

- Wal-Mart says that "Wal-Mart's 'full time' status begins at 34 hours per week, not 28, for associates hired after 2002." Before 2002, however, Wal-Mart's definition of full-time WAS 28 hours per week, and was raised in 2002 to 34 hours per week in order to raise the bar for healthcare eligibility for their employees - as the raise in hours coincided with the increase in eligibility requirements for healthcare. According to Wikipedia, "In 2002, Wal-Mart increased the waiting period for enrollment eligibility from 90 days to 6 months for full-time employees. Part-time employees must wait 2 years before they may enroll in the plan, and they may not purchase coverage for their spouses or children. The definition of part-time was changed from 28 hours or less per week to less than 34 hours per week." The change was not done to benefit more full-time employees, but to discourage more employees from being eligible for Wal-Mart's healthcare plan.

Suppose we accepted this correction. The 34-hour per week full-time definition still is not the 40-hour definition employed by most businesses in America. Also, at Wal-Mart's stated average hourly wage of \$9.68 per hour (source: WalmartFacts.com), a 34-hour week results in an annual wage of only \$17,114
 □ STILL below the poverty line for a family of four.

\$7,000 ANTI-UNION CAMERA PACKAGE per store
\$30,000 UNDERCOVER SPY VAN per store
\$100,000 24 hour ANTI-UNION HOTLINE
\$7,000,000 Rapid response team with CORPORATE JET

- Source: Data provided to the producers by Stan Fortune, former manager and 17-year employee of Wal-Mart
- According to a recent report issued by American Rights At Work ("Wal-Mart: Rolling Back Wages, Workers' Rights, and the American Dream"), at least 59 complaints have been issued by the National Labor Relations Board on the basis that Wal-Mart uses illegal surveillance techniques to monitor union activity inside and outside their stores. These include the following claims:
 - "Following a NLRB investigation of worker charges in Denver, Colorado; Paris, Texas; and Orlando, Florida, the government has charged Wal-Mart with illegal surveillance, threats and intimidation of its associates."
 - "Wal-Mart will face trial on February 10, 2003 for illegal surveillance of union supporters."
 - "Workers in Paris, Texas suffer similar injustices □ The NLRB investigation of Wal-Mart's actions resulted in a complaint charging that Wal-Mart managers carried out surveillance on their workers, restricted workers' attire in an effort to retaliate against union supporters and also threatened and interrogated workers."
 - "In Orlando, Florida, Wal-Mart faces a NLRB trial on June 28, 2003 for illegal surveillance of workers, illegal threats and harassment of workers."
 - Source: UFCW, "Wal-Mart's War on Workers," PR Newswire, January 8, 2003, and the National Labor Relations Board.

\$50 MILLION to settle an off-the-clock class action suit in Colorado

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- In 2000, "Wal-Mart paid \$50 million to settle a class-action suit that asserted that 69,000 current and former Wal-Mart employees in Colorado had worked off the clock."
- Source: Steven Greenhouse, "Suits Say Wal-Mart Workers Forced To Toil Off The Clock," *New York Times*, June 25, 2002 [reprinted via [Common Dreams](#)]

In Texas it is estimated that they cheated workers out of up to one hundred and fifty million dollars in unpaid wages

- "In a recently certified class-action suit in Texas on behalf of more than 200,000 current and former Wal-Mart workers, statisticians estimate that the company underpaid its Texas workers by \$150 million over four years by not paying them for the many times they worked during their daily 15-minute breaks. That \$150 million estimate does not include other types of unpaid work. The statisticians, who analyzed time records from 12 Wal-Mart stores, found that the Texas employees averaged at least one hour of unpaid work each week from working through breaks."
- Source: Steven Greenhouse, "Suits Say Wal-Mart Workers Forced To Toil Off The Clock," *New York Times*, June 25, 2002 [reprinted via [Common Dreams](#)]

Wal-Mart Managers delete time from workers' timecards

- In Massachusetts, "a Middlesex court judge has put his imprimatur on a suit alleging the retail giant failed to pay employees for time worked and neglected to give them meal and rest breaks, the Herald has learned. The eight-page ruling by Superior Court Judge Ernest B. Murphy cites an affidavit by a computer expert hired by the plaintiffs. The expert allegedly found 7,000 instances during a one-year period when Wal-Mart managers deleted large blocks of time from their employee payroll records."
- Source: John Strahinich, "[Judge OKs Employee Lawsuit Against Wal-Mart](#)," *Boston Herald*, January 7, 2005.
- Meanwhile, in California, a class-action lawsuit potentially involving up to 215,000 current and former Wal-Mart and Sam's Club employees "charges that Wal-Mart, based in Bentonville, Ark., deleted thousands of hours of time worked from employees' payroll records by erasing overtime hours and by penalizing employees who forgot to punch in after their meal breaks by denying them pay for the remainder of those days."
- Source: "[Alameda County Suit Alleges Wal-Mart Cheated Workers](#)," *Bay City News*, January 20, 2005.

Wal-Mart currently faces lawsuits in thirty-one different States for wage and hour abuses potentially involving hundreds of thousand workers.

- Wal-Mart Wage and Hour "Off the Clock" Class Actions:
 1. *Adcox v. WM*, US Dist. Ct. ("USDC"), Southern Dist. of TX, 11/9/04;
 2. *Armijo v. WM*, 1st Judicial Dist. Ct., Rio Arriba County, NM, 9/18/00;
 3. *Bailey v. WM*, Marion County Superior Ct. IN, 8/17/00;
 4. *Barnett v. WM*, Superior Ct. of WA, King County, 9/10/01;
 5. *Basco v. WM*, USDC, Eastern Dist. of LA, 9/5/00;
 6. *Braun v. WM*, 1st Judicial Dist. Ct. Dakota County MN, 9/12/01;
 7. *Braun v. WM*, Ct. of Common Pleas, Philadelphia County, PA, 3/20/02;
 8. *Brown v. WM*, 14th Judicial Circuit Ct., Rock Island, IL, 6/20/01;
 9. *Carr v. WM*, Superior Ct. of Fulton County, GA, 8/14/01;
 10. *Culver v. WM*, USDC, Dist. of CO, 12/10/1996;
 11. *Carter v. WM*, Ct. of Common Pleas, Colleton County, SC, 7/31/02;
 12. *Gamble v. WM*, Supreme Ct. of the State of NY, County of Albany, 12/7/01;
 13. *Gross v. WM*, Circuit Ct., Laurel County, KY, 9/29/04;
 14. *Hale v. WM*, Circuit Ct., Jackson County, MO, 8/15/01;
 15. *Hall v. WM*, 8th Judicial Dist. Ct., Clark County, NV, 9/9/99;
 16. *Harrison v. WM*, Superior Ct. of Forsyth County, NC, 11/29/00;
 17. *Holcomb v. WM*, State Ct. of Chatham County, GA, 3/28/00;
 18. *Hummel v. WM*, Common Pleas Ct. of Philadelphia County, PA, 8/30/04;
 19. *Iliadis v. WM*, Superior Ct. of NJ, Middlesex County, 5/30/02;

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20. *Kuhlmann (In Re: Wal-Mart Employee Litigation) v. WM*, Circuit Ct., Milwaukee County, WI, 8/30/01;
 21. *Lerma v. WM*, Dist. Ct., Cleveland County, OK, 8/31/01;
 22. *Lopez v. WM*, 23rd Judicial Dist. Ct. of Brazoria County, TX, 6/23/00;
 23. *Mendoza v. WM*, Superior Ct. of CA, Ventura County, 3/2/04;
 24. *Michell v. WM*, USDC, Eastern Dist. of TX, Marshall Div., 9/13/02;
 25. *Montgomery v. WM*, USDC, Southern Dist. of MS, 12/30/02;
 26. *Mussman v. WM*, IA Dist. Ct., Clinton County, 6/5/01;
 27. *Nagy v. WM*, Circuit Ct. of Boyd County, KY, 8/29/01;
 28. *Newland v. WM*, Superior Ct. of CA, Alameda County, CA, 01/14/05;
 29. *Osuna v. WM*, Superior Ct. of AZ, Pima County, 11/30/01;
 30. *Pickett v. WM*, Circuit Court, Shelby County, TN, 10/22/03;
 31. *Pittman v. WM*, Circuit Ct. for Prince George's County, MD, 7/31/02;
 32. *Robinson v. WM*, Circuit Ct., Holmes County, MS, 12/30/02;
 33. *Sago v. WM*, Circuit Ct., Holmes County, MS, 12/31/02;
 34. *Romero v. WM*, Superior Ct. of CA, Monterey County, 03/25/04;
 35. *Salvas v. WM*, Superior Ct., Middlesex County, MA, 8/21/01;
 36. *Sarda v. WM*, Circuit Ct., Washington County, FL, 9/21/01;
 37. *Savaglio v. WM*, Superior Ct. of CA, Alameda County, 2/6/01;
 38. *Scott v. WM*, Circuit Ct. of Saginaw County, MI, 9/26/01;
 39. *Smith v. WM*, Circuit Ct., Holmes County, MS, 12/31/02;
 40. *Thiebes v. WM*, USDC, Dist. of OR, 6/30/98;
 41. *Willey v. WM*, Dist. Ct. of Wyandotte County, KS, 9/21/01;
 42. *Williams v. WM*, Superior Ct. of CA, Alameda County, 3/23/04;
 43. *Wilson v. WM*, Common Pleas Ct. of Butler County, OH, 10/27/03;
 44. *Winters v. WM*, Circuit Ct., Holmes County, MS, 5/28/02.
- Source: Wal-Mart Stores 10K Filing, March 31, 2005, Pg. 16, Item 3.

Federal Poverty Level Family of Four - \$17,650

- Source: U.S. Department of Health and Human Services, 2001 Federal Poverty Guidelines

Average Wal-Mart Hourly Sales Employee Wages - \$13,861

- "On average, Wal-Mart sales clerks -- "associates" in company parlance -- pulled in \$8.23 an hour, or \$13,861 a year, in 2001, according to documents filed in a lawsuit pending against the company."
- Source: Anthony Bianco and Wendy Zellner, "Is Wal-Mart Too Powerful?" *Business Week*, October 6, 2003. Primary source information on 2001 wage data is from the testimony of Dr. Richard Drogin, in *Dukes v. WM*.

Wal-Mart is paying eleven million dollars to settle Federal allegations it used illegal immigrants to clean its stores.

- "Wal-Mart will escape criminal sanctions and pay \$11 million to settle claims stemming from a federal investigation of illegal workers hired by the company's cleaning contractors, the company said Friday...The more than four-year investigation was led by Immigration and Customs Enforcement agents and federal prosecutors in Pennsylvania. It produced 245 arrests of undocumented workers in 2003."
- Source: CNN/Money, "Wal-Mart Pays \$11M Over Illegal Labor," CNN.com, March 18, 2005.

Wal-Mart is facing a class-action lawsuit for discrimination against \$1.6 million former and current female employees.

- Source: Liza Featherstone, "Selling Women Short: The Landmark Battle for Workers' Rights At Wal-Mart," Basic Books, 2004.
- For more information on this lawsuit, please visit the Wal-Mart Class website.

Edith Arana was told by a manager, "There's no place for people like you in management..." - WAL-MART and Racial Discrimination

Wal-Mart disputes a claim made by Edith Arana in the film, that she experienced racial as well as gender discrimination in her experience working at Wal-Mart, by saying hers is an isolated incident.

- In fact, in addition to Edith Arana's claim, Cleo Page and Betty Dukes, two of the six named plaintiffs in *Dukes v. Wal-Mart Stores*, the largest gender discrimination class-action lawsuit in history, have also filed individual race discrimination claims against Wal-Mart.

Several of the other women involved in the class-action have provided depositions that attest to racial discrimination as well as gender discrimination. Those testimonies are available at the WalMartClass.com website and include the declarations of the following women, who testify to racial discrimination in addition to their gender discrimination claims:

- Umi Jean Minor
- Gina Espinoza-Price
- Jennifer Johnson
- Thearsa Collier
- Lorie Williams
- The company also faces a smaller class-action lawsuit from African American truckers who charge discrimination, which was publicized recently in the New York Times (source: Jonathan D. Glater, "2 Black Truckers Sue, Accusing Wal-Mart of Hiring Bias," New York Times, July 14, 2005).
- Also, the following reports attest to further racial discrimination practices:
 - "The EEOC noted that only one of the 20 drivers Wal-Mart hired in 2002 was black. The EEOC also noted that Wal-Mart hired some white drivers with more serious driving violations and less experience than black applicants."
 - Source: Tammy Joyner, "Truck Driver Applicant Accuses Wal-Mart of Racial Bias," Cox News Service, September 23, 2004.
 - In 2001, the Mexican-American Political Association initiated a boycott of a Fresno, CA Wal-Mart. Ben Benavidez, president of MAPA, claimed that "MAPA received complaints from current and past employees about the store manager and some of his assistants making remarks such as, 'You see one Mexican, you've seen them all,' 'We don't want our store front to look like a Mexican flea market,' and something to the effect of, 'Have you noticed how Mexican women like to buy body-revealing clothes?'"
 - Source: Louis Galvan, "Fresno Wal-Mart Mistreatment Alleged," Fresno Bee, November 24, 2001.
 - The NAACP's 2005 Industry Survey gave Wal-Mart a grade of C- "within the areas of employment, vendor development, advertising/marketing, charitable giving and investing/ franchising."
 - Source: NAACP 2005 Industry Survey
- Wal-Mart also testifies to its diversity by citing several awards it has won for racial diversity, including a citation from DiversityInc Magazine.

That same magazine also published an article entitled "Wal-Mart Diversity Head Can't Back Claims With Numbers," in which it states:

"The company won't say how many women and people of color now work as hourly associates, supervisors, managers and executives, and it won't describe hiring goals that it touts as critical to its new diversity efforts. As a result, Porter -- a 12-year-veteran of Wal-Mart -- has no factual support for her claim that Wal-Mart's existing diversity efforts have been successful or her contention that those well-publicized hiring goals will produce any significant change."
 (Source: Linda Bean, "Wal-Mart Diversity Head Can't Back Claims with Numbers," DiversityInc Magazine, June 23, 2004.)

City of Cameron give WAL-MART \$2.1 MILLION to set up shop

- "The city [of Cameron, MO] provided \$2.1 million in infrastructure improvements through sales and property-tax increment financing in the area

of a Supercenter and surrounding industrial park. Wal-Mart served as the developer for the project."

- Source: Good Jobs First, "Shopping For Subsidies: How Wal-Mart Uses Taxpayer Money To Finance Its Never-Ending Growth," May 2004.

City of Brookfield gives WAL-MART \$300,000,00 to open doors

- In Brookfield, "A Wal-Mart Supercenter of 110,000 sq. ft. was opened in 7-98. A voluntary annexation incorporated that area into the city. Utilities cost of \$300,000 were paid by developer with a reported agreement that funds would be paid-back by the positive sales tax revenue generated by the Supercenter with consideration of the decrease in revenue experienced by the largest five businesses in town at that time."
- Source: Donna Kennedy and John Morrison, Hometown Merchants Association Report.
Primary Source information: City of Brookfield, Missouri Department of Economic Development.

According to the Missouri Department of Economic Development, TIF subsidies are only intended for light industrial projects and usually would not apply to a Wal-Mart development, yet somehow Wal-Mart received TIF deals in both Cameron and Brookfield.

WAL-MART SUBSIDY NATIONWIDE: \$1.008 BILLION

- In an initial search of "electronic archives of local newspapers to find cases of Wal-Mart stores that had received" development subsidies, Good Jobs First uncovered "91 stores that have received public assistance. In total, these subsidies were worth about \$245 million to Wal-Mart and the developers of shopping centers in which a Wal-Mart store served as an anchor. Individual subsidy deals in those 91 stores ranged from less than \$1 million to about \$12 million, with an average of about \$2.8 million." Later, Good Jobs First conducted "searches in a database covering the one type of subsidy—industrial revenue bonds—for which some centralized information is available. This enabled [Good Jobs First] to identify another 69 stores that received low-cost financing of approximately \$138 million. This brought the total number of subsidy deals [Good Jobs First] identified to 244. The total value of all the subsidies was \$1.008 billion."
- Source: Good Jobs First, "Shopping For Subsidies: How Wal-Mart Uses Taxpayer Money To Finance Its Never-Ending Growth," May 2004.

Esry Family Subsidy: \$0

- The Esrys did not receive any kind of "tax abatement" through a tax-increment financing deal. Their grocery stores are not eligible for TIF-subsidized infrastructure improvements under Missouri law, though Wal-Mart developers were somehow able to receive TIF deals that they normally would not be eligible for.

The Esrys also have a small farm, which does qualify for federal funds. Federal small-farm subsidies differ from the types of subsidies that Wal-Mart receives from state and local governments across the nation. According to Wikipedia, the U.S. Department of Agriculture is required by law (via the Agricultural Adjustment Act of 1938, the Agricultural Act of 1949, and the CCC Charter Act of 1948, among others) to subsidize over two dozen agricultural commodities. The money for small-farm subsidies is already earmarked, by law, for that purpose in the government's budget. In contrast, the most common types of subsidies that Wal-Mart receives, including tax-increment financing (as described below), appropriates a portion of a city's tax revenue to finance infrastructure projects (construction of sewer and water lines, ingress and egress routes, etc) that most small businesses would have to pay for or finance themselves.

(For more about TIF subsidies, read Greg LeRoy's book "The Great American Jobs Scam: Corporate Tax Dodging And the Myth of Job Creation".)

Currently in the U.S. there are 26,699,678 SQUARE FEET of empty WAL-MARTS

- "As of [March 5, 2005], Wal-Mart Realty has a total of 356 buildings for sale or lease, a total of 26,699,678 million square feet of empty stores. That's enough empty space to fill up 534 football fields. This phenomenal figure makes Wal-Mart the King of Dead Air in America and the world. No other retailer has this many dead stores in its inventory. The annual figure ranges around 350 to 400 from year to year."
- Source: Al Norman, "Wal-Mart Has 356 'Dark Stores' Available for Sale or Lease," Sprawl-Busters.com, March 5, 2005.

1999: All new WAL-MART construction halted in state of PENNSYLVANIA due to Environmental Violations

- "The Pennsylvania Department of Environmental Protection (DEP) has signed a consent order and agreement with Wal-mart that will improve environmental construction practices for the Arkansas-based retailer's stores throughout Pennsylvania...The agreement is the result of violations of water quality laws and regulations at a Wal-mart under construction in Honesdale Borough, Wayne County, between January and September 1998...Wal-mart must correct all remaining violations at the Honesdale site under a schedule in the agreement. The retailer also will pay a \$100,000 civil penalty to the Commonwealth and \$2,800 to the Wayne County Conservation District...Three stop-work orders were issued by DEP for different areas of the construction site, and a hold was placed on new permits for Wal-mart construction sites throughout the Commonwealth as a result of the violations in Wayne County."
- Source: Press Release, PA Department of Environmental Protection (Northeast Regional Office), February 4, 1999.

2001: EPA orders WAL-MART to pay \$1.0 MILLION fine for Clean Water Violations in: TEXAS, OKLAHOMA AND MASSACHUSETTS

- "The Justice Department and the U.S. Environmental Protection Agency today reached an environmental agreement with Wal-Mart Stores Inc. to resolve claims the retailer violated the Clean Water Act at 17 locations in Texas, New Mexico, Oklahoma and Massachusetts. This is the first federal enforcement action against a company for multi-state violations of the Act's storm water provisions. The settlement commits Wal-Mart to establish a \$4.5 million environmental management plan, to improve the retailer's compliance with environmental laws at each of its construction sites and minimize the impact of its building on streams and watersheds. The settlement also compels the company to pay a \$1 million civil penalty."
- Source: Press Release, U.S. Environmental Protection Agency/Department of Justice, June 7, 2001.

2004: WAL-MART fined \$3.1 MILLION by EPA, the largest ever for a retailer, for Clean Water Act violations in TEXAS, COLORADO, CALIFORNIA, DELAWARE, MICHIGAN, SOUTH DAKOTA, NEW JERSEY, TENNESSEE and UTAH

- "\$3.1 Million Penalty Is Largest for Storm Water Violations at Construction Sites"
- "The Department of Justice and the U.S. Environmental Protection Agency, along with the U.S. Attorney's Office for the District of Delaware and the states of Utah and Tennessee, today announced a Clean Water Act settlement for storm water violations at Wal-Mart store construction sites across the country...In addition to paying a \$3.1 million civil penalty to the United States, Tennessee and Utah, Wal-Mart has agreed to spend \$250,000 on an environmental project that will help protect sensitive wetlands or waterways in one of the affected states, which are California, Colorado, Delaware, Michigan, New Jersey, South Dakota, Tennessee, Texas and Utah."
- Source: Press Release, U.S. Environmental Protection Agency/Department of Justice, May 12, 2004.

2005: Connecticut EPA orders WAL-MART to pay \$1.15 MILLION for Clean Water Act violations in 22 stores

- "Attorney General Richard Blumenthal and Department of Environmental Protection (DEP) Commissioner Gina McCarthy today announced a \$1.15 million settlement with Wal-Mart involving environmental violations at 22 stores related to stormwater and other water management issues."
- Source: Press Release, CT Attorney General's Office, August 15, 2005.

Cost for WAL-MART Factory Worker to Assemble: \$0.18 Retail cost at Wal-Mart: \$14.96

- Data provided by Charles Kernaghan, National Labor Committee

WAL-MART Imported \$18 BILLION from CHINA in 2004

- "The world's largest retailer, Wal-Mart Stores Inc, says its inventory of stock produced in China is expected to hit US\$18 billion this year [2004], keeping the annual growth rate of over 20 per cent consistent over two years."
- Source: Jiang Jingjing, "Wal-Mart's China Inventory To Hit US \$18B This Year." *China Daily*, November 29, 2004.

Lee Scott earnings for 2005: \$27,207,799

- Data computed from Wal-Mart Stores 2005 Proxy Statement; includes long-term incentives awarded in 2005 and contemporary value of stock options.

Average WAL-MART Hourly Sales Employee Earnings: \$13,861

- "On average, Wal-Mart sales clerks -- "associates" in company parlance -- pulled in \$8.23 an hour, or \$13,861 a year, in 2001, according to documents filed in a lawsuit pending against the company."
- Source: Anthony Bianco and Wendy Zellner, "Is Wal-Mart Too Powerful?" *Business Week*, October 6, 2003. Primary source information on 2001 wage data is from the testimony of Dr. Richard Drogin, in *Dukes v. WM*.

HELEN WALTON: \$18.0 BILLION
ALICE WALTON: 18.0 BILLION
JOHN WALTON: 18.2 BILLION
ROB WALTON: \$18.3 BILLION
JIM WALTON: \$18.3 BILLION

- Source: David Armstrong and Peter Newcomb, ed., "The 400 Richest Americans." *Forbes*, September 24, 2004.

Cost of WAL-MART Jet Fleet: \$125,350,000

- Data provided by Jeff Fiedler, Food and Allied Service Trades, AFL-CIO

The WALTON FAMILY Has Given LESS THAN 1% of Their Wealth to Charity Bill Gates has given 58%

- Source: *Business Week*, "The 50 Most Generous Philanthropists" [PDF file], November 29, 2004.

Wal-Mart Stores' Contributions to a Community

- According to the Wal-Mart Facts website, "The typical Supercenter raises or gives \$30,000 to \$50,000 a year to local charitable needs ranging from youth programs to literacy councils." From a survey of Wal-Mart's grand opening contributions, its giving averages to about \$47,222 per store.

According to the Nation, "The WMF's 2003 IRS 990 form is 2,239 pages long, far longer than that of the Ford Foundation, which has billions more in assets. That's because most WMF gifts are tiny: thousands or even hundreds of dollars to churches and Lions clubs and Boys and Girls clubs, \$500 to the YMCA of Nashville and Middle Tennessee and to the Tulip Trace (Indiana) Girl Scouts Council and so on. Communities where Wal-Mart faced a particular battle over

opening a new store--Inglewood, California, or New York City--enjoyed especially generous largesse. Like the flowers and other tokens of courtship from a suitor who later becomes a wife-beater, such gifts are often followed by demands for public subsidies and tax breaks. In this way Wal-Mart is repeating the strategy that has served it so well in Arkansas, where Wal-Mart and the Waltons' charitable gifts are many and company critics are relatively few. Says Lindsay Brown, president of the Central Arkansas Labor Council, 'It's a hell of a plan, and it works.' "

Taken in the context of Wal-Mart's taxpayer costs, however, Wal-Mart's per store charitable contributions do not match up to the amount of money a store takes in the "numerous forms of public assistance--Medicaid, Food Stamps, public housing--that often allow workers to subsist on Wal-Mart's low wages. A report by the House Education and Workforce Committee conservatively places [public assistance costs] at \$420,750 per store; the Wal-Mart Foundation's per-store charitable giving is just 11 percent of that amount (\$47,222)."

- Source: Liza Featherstone, "On The Wal-Mart Money Trail," *The Nation*, November 21, 2005.

The WALTON FAMILY Made \$3.2 MILLION in Political Contributions in 2004

- "Led by Sam Walton's only daughter, Alice, the family spent \$3.2 million on lobbying, conservative causes and candidates for last year's federal elections. That's more than double what it spent in the previous two elections combined, public documents show...a USA TODAY review of public documents reveals a small-town Arkansas family emerging as a political juggernaut on tax issues, extending Wal-Mart's influence over U.S. society even more."
- Source: Jim Hopkins, "Wal-Mart Family Lobbies For Tax Cuts," *USA Today*, April 5, 2005.

A WAL-MART Worker may donate money from their paycheck to the CRITICAL NEED FUND, a program to aid other employees in times of crisis, like a fire or tornado.
In 2004, WAL-MART Employees gave OVER \$5 MILLION to help fellow workers

- Source: Form 990, Wal-Mart Associates in Critical Need Fund, 2004

The Walton Family gave \$6,000

- Source: Walton Family Foundation

The WALTON FAMILY received a federal tax cut of: \$91,500.00 per HOUR in the 2004 tax year

- "FAST has calculated that in 2004, assuming the Walton family continues to hold their 1.68 billion shares of Wal-Mart stock and the company actually pays the 48 cent per share dividend projected, the five Walton family members (Helen, Rob, Alice, Jim and John) will save at least \$190,367,803 in federal income taxes."
- Source: Jeff Fielder, "Cheney Visit To Wal-Mart Shows He'll Never 'Get It'," Food and Allied Service Trades Department (AFL-CIO), May 5, 2004.

Screen Crawl of Wal-Mart Parking Lot Crimes that Occurred in the First 7 Months of 2005

- Compiled from searches of newspaper and television news archives on Google and Lexis/Nexis. View the list.

Screen Crawl of Community Victories Against Wal-Mart

- Compiled from searches of the Sprawl-Busters database, Google, and Lexis/Nexis. View the list.

Some Facts on Wal-Mart's Impact on Local Business

"Wal-Mart's influence begins before a store even goes in." - Los Angeles Times

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- When Jon Hunter applied for a business loan for H&H Hardware (presumably against the equity on the building that he had been paying on for the past 15 years), the bank actually de-valued Hunter's property, specifically citing Wal-Mart as a factor:

"I put this business plan together that with the help of hard, different hardware organizations and people and I went to several different banks to check on some funding. And, ah, when I got an appraisal on my, on the business and, and the buildings, you know, the appraiser actually came in and de-valued the building. Here I figured it would be appreciating, after, like ten years, and he came in with a lower value and I questioned him, said, "How can this be?" I say, you know, "With inflation and, the economy's not great but it still should be at least holding its value." And he said, "No," he said, ah, "Any time a Wal-Mart's coming in to a town they, they knock the values down because sooner or later there's going to be a bunch of empty buildings and none of them are going to be able to sell."

This shows that there is a recognition by market forces that Wal-Mart has a negative effect on local businesses in surrounding areas.

- To say that Wal-Mart wipes out ALL existing businesses is of course ridiculous, and we do not make that point in our film. Businesses close for a number of reasons; the point we are making in the film, a point that is supported by a wealth of evidence present and not present in the film, is that Wal-Mart, in the final equation, hurts rather than helps these businesses in the struggle to remain open and competitive.

As Greg LeRoy, author of the recent book "The Great American Jobs Scam," puts it, "Just because there are more places to shop does not mean people have more money to spend." Several studies, including those presented at Wal-Mart's own recent economic conference, affirm that Wal-Mart does not create new economic activity, but merely captures existing sales from businesses in the town and the surrounding areas. These effects are also not immediate, but build up over a length of time.

- Consider the following findings from existing academic studies that have studied Wal-Mart's effect on local markets:
 - A study of small and rural towns in Iowa showed lost sales for local businesses ranging from -17.2% in small towns to -61.4% in rural areas, amounting to a total dollar loss of \$2.46 BILLION over a 13-year period.
 - In Iowa, retail businesses in several categories experienced a decline of up to 59% over a 13-year period.
 - Source: Kenneth Stone, "Impact of the Wal-Mart Phenomenon on Rural Communities In Iowa" [[PDF file](#)], University of Iowa, 1997
 - In Mississippi, local food stores in counties hosting a Wal-Mart supercenter lost sales of up to 17 percent over 5 years
 - For every gain in sales by a Supercenter, there are corresponding losses in sales for local and/or family businesses
 - Source: Kenneth Stone, "The Economic Impact of Wal-Mart Supercenters on Existing Businesses in Mississippi" [[PDF file](#)], University of Iowa, 2003
 - In Maine, Wal-Mart captured an average \$7.8 million from local/family businesses in their host towns during the first year of operation.
 - Source: Georgeanne Artz, "The Impact of Wal-Mart on Retail Market Structure in Maine," unpublished thesis, University of Maine, 1999

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- Retail Forward, an industry consulting firm, estimates that for every Wal-Mart Supercenter that opens in the next five years, two supermarkets will close.
 - Source: Retail Forward, "Wal-Mart Food: Big, and Getting Bigger," 2003

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BIG BOX CAMPAIGNERS EMAIL

Please send event information and announcements to Trina Tocco at trina.tocco@ilrf.org or (202) 347-4100, x103.

The Big Box Campaigners Email is a regular update, compiled by the Big Box Collaborative, on campaigns, reports, and events. Please use these emails to spread information about your big box campaigning.

The Big Box Collaborative is the hub for organizations seeking to fundamentally transform Wal-Mart and the other "big box" retail stores. The Collaborative includes organizations drawn from multiple sectors and focused on a variety of issues. It provides a space where organizations can develop shared demands and coordinate different campaign strategies.

WEEKLY FEATURE: Wal-Mart Reputation Drops in New Study

In this update you will find:

U p c o m i n g . E v e n t s

Big Box Campaign Environmental Group Coordinator Job Announcement Are you planning anything?
W o r t h . a . L o o k

Like Clock Work: Wal-Mart Faces 80 Class-actions, Most From Off-the-clock Allegations (Morning News) Home Depot Offers Recycling for Compact Fluorescent Bulbs (New York Times) State's highest court rules against big box voter initiative (KTUU) When Wal-Mart Moves In, Neighborhood Businesses Suffer. Right? (Washington Post) Supermarkets Failing to Adopt Sustainable Seafood Buying Practices: Report (Green Biz) India: Wal-Mart's Drug Connection (Huffington Post) R e s o u r c e s

Carting Away the Oceans: How Grocery Stores are Emptying the Seas BigBox Toolkit: Countering Mega-Retailers - Rebuilding Local Businesses Wal-Mart Reputation Drops in New Study India: Impact of Organized Retailing on the Unorganized Sector Consensus Standards for Big Box Retailers Released Discounting Rights: Wal-Mart's Violation of US Workers' Right to Freedom of Association Wal-Mart's Sustainability Initiative: A Civil Society Critique produced by 23 organizations G e t . I n v o l v e d & T a k e . A c t i o n

Consumerist's "Worst Corporation in America" Vote Wal-Mart into the Corporate Hall of Shame! Tell TIAA-CREF to Put Pressure on Wal-Mart and Divest BBC Working Groups

Trina Tocco
Campaigns Coordinator, International Labor Rights Forum
Coordinator, Big Box Collaborative
www.LaborRights.org
Office: 202-347-4100 x103
Cell: 269-873-1000

Big Box Backlash

The Stealth Campaign at the World Trade Organization to Preempt Local Control Over Land Use

To download the entire report. http://www.citizen.org/documents/Zoning_Memo_Final.pdf

As communities across the United States and elsewhere are increasingly successful in their effort to limit "big box" store expansion and destructive retail practices through transparent and accountable measures at the local level, Wal-Mart and other retailers have pursued rules at the World Trade Organization (WTO) which threaten to preempt, or at the very least chill, these local laws. These rules are part of the General Agreement on Trade in Services (GATS).

In 1994, the United States committed retail and wholesale distribution, as well as the hotel and restaurant sectors, to the terms of the GATS, one of 17 Uruguay Round agreements enforced by the Geneva-based World Trade Organization (WTO). The GATS expansive "market access" rules are geared toward facilitating the entry of foreign service providers into the U.S. market by incorporation or acquisition of U.S. firms. These GATS rules forbid limits on the number of services suppliers, as well as measures that would reduce the value of a service transaction or limit the number of employees. Policies containing economic needs tests, like that in the city of Los Angeles for very large retail operations, are explicitly forbidden.

Unless the United States takes action to fix this problem in the current round of negotiations, local governments could see challenges to state and local land use laws brought before WTO tribunals, which are empowered to authorize trade sanctions against countries that refuse to conform their domestic policies to WTO dictates. Across the country, state and local officials are working to put laws in place to protect their communities, their environment, their wage base and tax dollars by putting land use limits on "big box" retailers, as well as retail chains and other development projects they deem destructive to the community or the environment or out of step with local needs and planning.

Among the local laws threatened by GATS rules are those that impose:

size and height restrictions on big box stores; limits on hours of operation; economic needs tests before stores can be approved; and limits on development to protect the environment or protect historic and cultural sites.

Trade negotiators are now working behind closed doors to add more service sectors and expand the scope of the GATS rules even further. This WTO expansion of power means a group of trade officials, rather than democratically elected policy-makers, will be making decisions about local laws that affect our communities.

Write to your governor and request that your state be "carved out" from any GATS commitments implicating zoning and land use laws (including retail distribution, wholesale distribution, hotel and restaurant sectors). Ask that your state be carved out from future GATS commitments as well; Contact your Member of Congress, and request that WTO GATS commitments be clarified to exempt existing and future zoning and land use laws. For sample materials or for more information, see www.tradewatch.org or contact Saerom Park at 202.454.5127 or spark@citizen.org

Trip Generation Characteristics of Free-Standing Discount Supercenters

The Institute of Traffic Engineers just published a new study showing that Supercenters generate "substantially more" traffic than previously thought, particularly during the p.m. peak hour.

PDF file

WALMART Real Wage and Turnover Study

Commissioned by
Wal-Mart Alliance for Reform Now (WARN)
Wal-Mart (Florida Operations) Wage Analysis

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November 2005

warnwalmart.org/fileadmin/WARNstorage/walmart_study_-_v2__1_.pdf

What Do We Know About Wal-Mart?

An Overview of Facts and Studies for New Yorkers

As Wal-Mart continues to expand across New York State, growing attention is being focused on the company's employment practices and local economic impact. In this policy report, we provide a comprehensive overview of the available information on Wal-Mart's wages and health benefits, compliance with workplace laws, cost to the taxpayer, and impact on local economies.

<http://www.brennancenter.org/programs/downloads/aboutwalmart.pdf>

Shameless: How Wal-Mart Bullies Its Way Into Communities Across America

As the world's largest corporation, Wal-Mart behaves shamelessly in the way it forces itself on American communities. Its aggressive bullying of American communities occurs because Wal-Mart's growth is central to its business model; it has to grow to sustain its profits, \$10 billion in 2004 alone. Analysts have noted that Wal-Mart's growth efforts are nothing short of a "massive undertaking."

This special report reviews Wal-Mart's bullying tactics through a series of local case studies. Using highly publicized examples like Inglewood, California and Chicago, Illinois alongside less well-known stories from cities like Stoughton, Wisconsin and Lewiston, Maine, the findings reveal patterns: Wal-Mart's use of local front groups, their reliance on a SWAT team of corporate mouthpieces, aggressive litigation tactics, outright bait-and-switches, and a trail of broken promises. Today, as more American communities rise to fight back against the retail giant, this report offers a strategic map of the company's tactics.

This report is a tool for those who share our belief that the power of this wealthy corporation can be put to better use, and that American communities must be allowed to decide for themselves how best to sustain their vibrant economies

BAKERSFIELD RULING

court documents

BAKERSFIELD REPORT

Wal-Mart Opponents Hit CEQA Home Run
CALIFORNIA PLANNING & DEVELOPMENT REPORT
VOL. 20, NO. 1 – January 2005
By Paul Shigley

An appellate court has overturned separate environmental impact reports and project approvals for two Bakersfield shopping centers with Wal-Mart supercenters as anchors. The court ruled that the city must address the potential for the projects to cause urban decay, consider the combined impacts of the two shopping centers, and correlate the projects' air quality impacts

<http://www.againstthewal.com/studies.htm>

5/26/2010

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to effects on human respiratory health.

The published opinion - the first regarding a Wal-Mart supercenter - appears to be a home run for Wal-Mart opponents, who are making similar arguments in numerous locations. Attorney Steven Herum, who represented a group of project opponents called Bakersfield Citizens for Local Control, said the court "correctly identifies the fact that Wal-Mart supercenters have unique impacts and that the EIR is going to have to reflect this."

Attorney Stephen Kostka, author of numerous California Environmental Quality Act practice treatises, called the decision an "atomic bomb." The Fifth District demanded that an EIR contain an analysis of something that most analysts would call speculative, namely the impact that a Wal-Mart supercenter could have on specific other retailers and business locations, said Kostka, of Bingham McCutchen. How, he asked, do you mitigate the impact of lower prices? Kostka, who is not involved in the litigation, also questioned how an EIR could correlate a tiny increase in cumulative air pollution to ultimate impacts on human health, as the court required.

Bakersfield City Attorney Virginia Gennaro said city officials were still evaluating the ruling and deciding how to proceed. "Here in the City of Bakersfield, we don't think urban decay will be a problem," Gennaro commented. "We are growing at such a rate that it isn't a concern."

The fact that both shopping centers are partially built complicates the situation. At one site, a Lowe's Home Improvement Warehouse is complete and in business, and at the other location a Kohl's department store has opened. At both locations, Wal-Mart supercenters sit partially complete.

A trial court judge earlier halted further construction of the Wal-Mart stores. Four days after the Fifth District issued its ruling, project opponents asked the Fifth District to halt all construction at the two shopping centers until litigation is resolved.

Nearly three years ago, developer Panama 99 Properties LLC filed an application for a 370,000-square-foot shopping center on Panama Lane in southwestern Bakersfield. At the time, the empty site was zoned for low-density residential uses and open space. The new center would feature a Wal-Mart supercenter, Lowe's and a gas station. The proposed supercenter would replace an existing, smaller Wal-Mart 1.4 miles away.

One week later, developer Castle & Cooke Commercial-CA (C&C) filed an application for a 700,000-square-foot shopping center called Gosford Village. Zoned for service industrial uses, the site was 3.6 miles away from the Panama Lane project site. Although the Gosford Village EIR said no tenants had been identified, it was common knowledge the project would have a supercenter, Kohl's, a Sam's Club and numerous other stores and restaurants.

Two separate EIRs were prepared. The Panama Lane EIR identified significant and unavoidable impacts on air quality and noise. The Gosford Village EIR found significant and unavoidable impacts on air quality, both individually and cumulatively. The Bakersfield City Council considered both projects on February 12, 2003. The council certified both EIRs and adopted statements of overriding considerations, with all actions occurring under the City Council's consent calendar.

Later in the meeting, the council conducted a public hearing to approve general plan amendments and rezonings for the projects. Bakersfield Citizens for Local Control (BCLC), a group associated with grocery store labor unions, filed separate lawsuits over the EIRs. In January 2004, Superior Court Judge Kenneth Twisselman ruled the documents inadequate because they did not study the question of whether the two shopping centers, individually or cumulatively, could trigger a series of events leading to urban decay. However, Judge Twisselman left the project entitlements intact and allowed construction to proceed - except for the Wal-Mart supercenters, construction of which Twisselman halted.

The Wal-Mart opponents appealed parts of the decisions in both cases; C&C appealed part of the decision regarding Gosford Village. The Fifth District combined the appeals and then ruled squarely for BCDC.

Wal-Mart opponents and regulatory bodies across the country have pressed the urban decay argument. The BCDC presented a study by San Francisco State University economics Professor C. Daniel Vencill that identified 29 businesses, many of them grocery stores, that were at risk of closing if the projects went forward. Those closures could lead to long-term or permanent vacancies, building deterioration and "then culminate in physical effects associated with blight-light conditions," Vencill concluded.

The opponents also submitted studies and news reports from California and nationally about the effects on a market that is

saturated with supersized retailers. The Fifth District ruled that the environmental studies' lack of a discussion regarding potential urban/suburban decay violated CEQA. "[T]he economic and social effects of proposed projects are outside CEQA's purview," Justice Timothy Buckley wrote for the court. "Yet, if the forecasted economic or social effects of a proposed project directly or indirectly will lead to adverse physical changes in the environment, then CEQA requires disclosure and analysis of these resulting physical impacts." "[W]hen there is evidence suggesting that the economic and social effects caused by the proposed shopping center ultimately could result in urban decay or deterioration, then the lead agency is obligated to assess this indirect impact," Buckley continued. "Many factors are relevant, including the size of the project, the type of retailers and their market areas, and the proximity of other retail shopping opportunities. The lead agency cannot divest itself of its analytical and informational obligations by summarily dismissing the possibility of urban decay or deterioration as a 'social or economic effect' of the project."

The court said the record contained "a great deal of evidence" regarding potential urban decay. "This evidence cannot be cavalierly dismissed as 'hit pieces' designed to disparage a specific corporation. Studies discussing the experiences of other communities constitute important anecdotal evidence about the way the proposed shopping centers could serve as a catalyst for urban deterioration and decay in the city. The Vencill report is extremely significant and it strongly supports BCLC's position that CEQA requires analysis of urban decay," the court ruled.

Furthermore, the Fifth District said the city must address the unique nature of giant stores that operate 24 hours a day. "[T]o simply state as did the Gosford EIR that 'no stores have been identified' without disclosing the type of retailers envisioned for the proposed project is not only misleading and inaccurate, but it hints at mendacity," Buckley wrote.

The court also found that the city should not have considered the project EIRs in isolation. "There is not merit to the position of city and developers that cumulative impacts analysis does not require consideration of both shopping centers because, in each case, the other shopping center is outside the radius of the 'project area' as defined in the EIRs," Buckley wrote. "Simply put, selection of 'appropriate' geographic areas that just happen to narrowly miss the other large proposed shopping center in every category of impacts despite their overlapping market areas and shared roadways does not constitute the good faith disclosure and analysis that is required by CEQA."

Regarding air quality, the court found the EIRs did not acknowledge "the well-known connection between reduction in air quality and increases in specific respiratory conditions and illnesses. ... The health impacts resulting from the adverse air quality impacts must be identified and analyzed in the new EIRs."

The court ordered Bakersfield to void certification of the EIRs, the findings of overriding consideration and project approvals. After completing new EIRs, the city "may require completed portions of the projects to be changed or removed," the court noted. Kostka, of Bingham McCutchen, said the decision is worrisome because the court relied heavily on BCLC testimony presented at the City Council public hearing. "It [the ruling] not only allows late hits, it rewards them," Kostka said. "What the case says is that someone can wait until the very, very end of the process, and then pile information and reports on the agency."

Herum, however, denied that was opponents' strategy. "That was the first and only time the City Council ever looked at the project," Herum said. "We made the same arguments that we had been making since the scoping session." And the Fifth District did not look favorably on the city's CEQA process, saying the city "improperly segmented environmental review from project approval in contravention of [CEQA] Guidelines § 15202, subdivision (b)." The public may raise new environmental objections until the close of a public hearing on project approval, the court determined.

The Case: Bakersfield Citizens for Local Control v. City of Bakersfield, No. F044943, 04 C.D.O.S. 10918, 2004 DJDAR 14768. Filed December 13, 2004. The Lawyers: For BCLC: Steven Herum, Herum, Crabtree & Brown, (209) 472-7700. For the city: Virginia Gennaro, city attorney, (661) 326-3721. For Castle & Cooke California: Craig Beardsley, Jones & Beardsley, (661) 664-2900. For Panama 99 Properties: John Nolan, Gresham, Savage, Nolan & Tilden, (909) 684-2171.

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New Jersey Considers Regional Impact Studies for Big-Box Stores

Lawmakers in New Jersey have proposed legislation that would require communities to weigh the regional economic impact of proposed big-box stores before.....

further information can be obtained at [New Rules Project](#)

Pennsylvania State University

Wal-Mart and County-Wide Poverty October 18, 2004

The presence of a Wal-Mart store hinders a community's ability to move families out of poverty, according to this study....further information at [New Rules Project](#)

UC Berkeley Labor Center

The Hidden Cost of Wal-Mart Jobs August 2, 2004

[Click here for PDF Study](#)

UC Berkeley Labor Center

Response to Wal-Mart statements August 3, 2004

[Click Here for PDF Study](#)

Mark R. Wolfe Comparison of Vehicle Trip Forecasts for Big Box Stores February 10, 2004

At your request, I have prepared a series of comparisons of the amount of weekly traffic typically generated by discount superstores (e.g. Super Wal-Mart), discount clubs (e.g. Costco), and home improvement superstores (e.g. Home Depot). The traffic volume estimates in this letter are based on studies compiled by the Institute of Transportation Engineers (ITE) in Trip Generation, 7th Edition. This publication is the definitive source for estimating trips generated from different land use types. This edition was recently updated in late 2003 to include recent traffic studies conducted over the last six years. The information provided in this letter includes total daily trips by the day of the week and total weekly trips... [\[click here for more\]](#) [\[click here for pdf version\]](#)

Supercenters and the Transformation of the Bay Area Grocery Industry: Issues, Trends, and Impacts January 2004

Bay Area Economic Forum

A partnership of the Bay Area Council and the Association of Bay Area Governments January 2004

Project Supervisor: R. Sean Randolph

Bay Area Economic Forum Research and Analysis

Dr. Marlon Boarnet and Dr. Randall Crane, Principals Daniel Chatman and Michael Manville, Associates, Public Economics Group

INTRODUCTION

The nation's retail grocery sector is undergoing a major transformation, led by supercenters – big-box retail stores with full-scale grocery service. These supercenters are the latest development in the nationwide restructuring of the retail grocery industry. Based on efficient distribution systems, low prices, and shoppers increasingly seeking value, supercenters are intensifying competition within the sector. While they are a national phenomenon, supercenters also have important local impacts. [\[click here to download the pdf file\]](#)

EVERYDAY LOW WAGES: THE HIDDEN PRICE WE ALL PAY FOR WAL-MART

A REPORT BY THE DEMOCRATIC STAFF OF THE COMMITTEE ON EDUCATION AND THE WORKFORCE

U.S. HOUSE OF REPRESENTATIVES REPRESENTATIVE GEORGE MILLER (D-CA), SENIOR DEMOCRAT
FEBRUARY 16, 2004

INTRODUCTION

The retail giant Wal-Mart has become the nation's largest private sector employer with an estimated 1.2 million employees.¹ The company's annual revenues now amount to 2 percent of the U.S. Gross Domestic Product.² Wal-Mart's success is attributed to its ability to charge low prices in mega-stores offering everything from toys and furniture to groceries. While charging low prices obviously has some consumer benefits, mounting evidence from across the country indicates that these benefits come at a steep price for American workers, U.S. labor laws, and community living standards.

Wal-Mart is undercutting labor standards at home and abroad, while those federal officials charged with protecting labor standards have been largely indifferent. Public outcry against Wal-Mart's labor practices has been answered by the company with a cosmetic response. Wal-Mart has attempted to offset its labor record with advertising campaigns utilizing employees (who are euphemistically called "associates") to attest to Wal-Mart's employment benefits and support of local communities. Nevertheless – whether the issue is basic organizing rights of workers, or wages, or health benefits, or working conditions, or trade policy – Wal-Mart has come to represent the lowest common denominator in the treatment of working people.

This report reviews Wal-Mart's labor practices across the country and around the world and provides an overview of how working Americans and their allies in Congress are seeking to address the gamut of issues raised by this new standard-bearer of American retail. WAL-MART'S LABOR PRACTICES WORKERS' ORGANIZING RIGHTS The United States recognizes workers' right to organize unions. Government employers generally may not interfere with public sector employees' freedom of association. In the private....[\[click here for more\]](#) [\[click here for pdf version\]](#)

The Andersonville Study of Retail Economics

By Civic Economics

October 2004

This compelling study, commissioned by the Andersonville Development Corporation, finds that locally owned businesses generate 70 percent more local economic impact per square

further information can be obtained at [New Rules Project](#)

Understanding the Fiscal Impacts of Land Use in Ohio

by Randall Gross, Development Economics
August 2004

This report reviews and summarizes the findings of fiscal impact studies conducted in eight central Ohio communities between 1997 and 2003. In seven of the eight

further information can be obtained at [New Rules Project](#)

The Economic Impact of Locally Owned Businesses vs. Chains: A Case Study in Midcoast Maine

by the Institute for Local Self-Reliance and Friends of Midcoast Maine,
September 2003.

Three times as much money stays in the local economy when you buy goods and services from locally owned businesses instead of large chain stores, according to this analysis...

further information can be obtained at [New Rules Project](#)

The Fiscal and Economic Impact of a Proposed Shopping Center Project on the City of Leominster

by Dr. Thomas Muller,
August 2003.

This study examines the likely impact of a proposed 510,000-square-foot shopping center, which would include a Wal-Mart supercenter, a Lowe's, a department store such as

further information can be obtained at [New Rules Project](#)

Santa Fe Independent Business Report

by Angelou Economics,
November 2003.

Relying on a Dun & Bradstreet database, this study found that chains are multiplying much faster than independent businesses in Santa Fe, New Mexico, Between 1998 and 2003....

further information can be obtained at [New Rules Project](#)

Final Report on Research for Big Box Retail/Superstore Ordinance

prepared for the Los Angeles City Council by Rodino Associates,
October 2003.

24/2

This study concludes that big box stores would harm low-income neighborhoods in Los Angeles by reducing competition, creating blight, lowering wages, and forcing new costs

further information can be obtained at [New Rules Project](#)

Time to Switch Drugstores?

**Consumer Reports,
October 2003.**

"If you're among the 47 percent of Americans who get medicine from drugstore giants such as CVS, Eckerd, and Rite Aid, here's a prescription: Try shopping somewhere else.

further information can be obtained at [New Rules Project](#)

Economic Impact Analysis: A Case Study

**by Civic Economics,
December 2002.**

This study examines the local economic impact of two locally owned businesses in Austin, Texas---Waterloo Records and Book People---and compares this with the economic

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Fiscal Impact Analysis of Residential and Nonresidential Land Use Prototypes

**by Tischler & Associates,
July 2002.**

Big box retail, shopping centers, and fast-food restaurants cost taxpayers in Barnstable, Massachusetts, more than they produce in revenue, according to this analysis. The study

further information can be obtained at [New Rules Project](#)

The Impact of 'Big-Box' Building Materials Stores on Host Towns and Surrounding Counties in a Midwestern State

**by Economics Professor Kenneth E. Stone and Extension Program Specialist
Georgeanne M. Artz, Iowa State University,
2001.**

This study examines several Iowa communities where big box building supply stores, such as Menards and Home Depot, have opened in the last decade. Sales of hardware and

further information can be obtained at [New Rules Project](#)

Understanding the Tax Base Consequences of Local Economic Development Programs

by RKG Associates,
2001

The city of Concord, New Hampshire provides an example of what can happen when a community allows massive commercial growth while failing to protect its existing economic

further information can be obtained at [New Rules Project](#)

The Impact of Big Box Grocers on Southern California: Jobs, Wages, and Municipal Finances

Prepared for the Orange County Business Council
by Dr. Marlon Boarnet of the University of California at Irvine and
Dr. Randall Crane of the University of California at Los Angeles,
1999.

The most useful parts of this study deal with Wal-Mart's impact on wages.

further information can be obtained at [New Rules Project](#)

What Happened When Wal-Mart Came to Town? A Report on Three Iowa Communities with a Statistical Analysis of Seven Iowa Counties

by Thomas Muller and Elizabeth Humstone,
National Trust For Historic Preservation,
1996.

This study examined the impact of Wal-Mart on several Iowa communities.

further information can be obtained at [New Rules Project](#)

St. Albans, Vermont State Environmental Board Act 250 Decision 1994

A cost/benefit analysis of a proposed Wal-Mart store in St. Albans, Vermont, found that the store would cause dozens of existing businesses to close, leading to a net loss of 110,000 square feet of retail space.

further information can be obtained at [New Rules Project](#)

Fiscal & Economic Impact Assessment of the Proposed Wal-Mart Development by Land Use Inc. and RKG Associates, 1993.

This study found that a new Wal-Mart store in Greenfield, Massachusetts, would cost existing merchants \$35 million in sales.

further information can be obtained at [New Rules Project](#)

**Impacts of Development on DuPage County Property Taxes Prepared
by DuPage County Development Department for the County Regional Planning Commission, Illinois,
October 1991.**

This study demonstrated that the costs of encouraging new commercial development---

further information can be obtained at New Rules Project

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CERTIFIED FOR PARTIAL PUBLICATION*

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT

BAKERSFIELD CITIZENS FOR LOCAL
CONTROL,

Plaintiff and Appellant,

v.

CITY OF BAKERSFIELD,

Defendant and Respondent;

PANAMA 99 PROPERTIES LLC,

Real Party in Interest.

F044943

(Super. Ct. No. 249669)

BAKERSFIELD CITIZENS FOR LOCAL
CONTROL,

Plaintiff and Appellant,

v.

CITY OF BAKERSFIELD,

Defendant and Respondent;

CASTLE & COOKE COMMERCIAL-CA,
INC.,

Real Party in Interest and Appellant.

F045035

(Super. Ct. No. 249668)

OPINION

APPEALS from judgments of the Superior Court of Kern County. Kenneth C.
Twisselman II, Judge.

Herum Crabtree Brown, Steven A. Herum and Brett S. Jolley for Plaintiff and
Appellant Bakersfield Citizens for Local Control.

Jones & Beardsley, Mark A. Jones, Craig N. Beardsley and Christopher Finberg
for Real Party in Interest and Appellant Castle & Cooke California, Inc.

* Pursuant to California Rules of Court, rules 976(b) and 976.1, this opinion is
certified for publication with the exception of parts VII, VIII and IX.

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Virginia Gennaro, City Attorney; Hogan Guiney Dick and Michael M. Hogan for Defendant and Respondent City of Bakersfield.

Gresham Savage Nolan & Tilden, John C. Nolan and Jennifer M. Guenther for Real Party in Interest Panama 99 Properties LLC.

INTRODUCTION

Appellant Bakersfield Citizens for Local Control (BCLC) has challenged development of two retail shopping centers in the southwestern portion of the City of Bakersfield (City), alleging violations of the California Environmental Quality Act (CEQA). The shopping centers are located 3.6 miles apart.¹ When complete, they will have a combined total of 1.1 million square feet of retail space. Each shopping center will contain a Wal-Mart Supercenter (Supercenter) plus a mix of large anchor stores, smaller retailers, and a gas station. An Environmental Impact Report (EIR) was prepared and certified for each project.

In these consolidated appeals we are called upon to assess the sufficiency of the EIR's. In the published portion of this opinion, we first determine that BCLC has standing, that it exhausted its administrative remedies and that the appeals are not moot. We then explain that the EIR's do not fulfill their informational obligations because they failed to consider the projects' individual and cumulative potential to indirectly cause urban/suburban decay by precipitating a downward spiral of store closures and long-term vacancies in existing shopping centers. Furthermore, the cumulative impacts analyses are defective because they did not treat the other shopping center as a relevant project or consider the combined environmental impacts of the two shopping centers. Finally, we explain that failure to correlate the acknowledged adverse air quality impacts to resulting adverse effects on human respiratory health was erroneous. These defects are prejudicial

¹ References to mileage, square footage and acreage are approximate.

and compel decertification of the EIR's and rescission of project approvals and associated land use entitlements. In the unpublished portion of this decision, we resolve the rest of the CEQA challenges.

FACTUAL OVERVIEW

Real party in interest Panama 99 Properties LLC (P99) is developing a 370,000-square-foot retail shopping center named Panama 99 (Panama) on 35 acres of vacant land located at the northeast corner of Panama Lane and Highway 99. The project site was zoned for mobile home use and its general plan designation was low-density residential/open space.

Real party in interest and appellant Castle and Cooke Commercial-CA, Inc. (C & C), is developing a 700,000-square-foot regional retail shopping center named Gosford Village (Gosford) on 73 acres of vacant land located on the southwest corner of Pacheco Road and Gosford Road. The project site's zoning and general plan land use designation was service industrial.

Panama is located 3.6 miles east of Gosford. The two shopping centers share some arterial roadway links.

Each shopping center will feature a 220,000-square-foot Supercenter as its primary anchor tenant. Supercenters "combin[e] the traditional Wal-Mart discount store with a full-size grocery store." Supercenters compete with large discount stores, traditional department stores, supermarkets and other grocery stores, as well as drug stores and apparel stores. The Supercenter at Panama will replace an existing Wal-Mart store that currently is located 1.4 miles north of the Panama site. In addition to the Supercenter, Panama will contain a Lowe's Homes Improvement Warehouse (Lowe's), a gas station and a satellite pad. Gosford will contain a total of 17 retail stores, plus fast food restaurants and a gas station. In addition to the Supercenter, there will be six other anchor tenants, including Kohl's Department Stores (Kohl's) (apparel and home related

items) and Sam's Club (warehouse club selling groceries and a wide array of consumer products).

P99 and C & C (collectively developers) applied in early 2002 for project approvals and associated zoning changes and general plan amendments. A separate EIR was prepared for each shopping center (hereafter the Panama EIR and the Gosford EIR). The Panama EIR concluded that Panama would have significant and unavoidable direct adverse impacts on air quality and noise. The Gosford EIR concluded that Gosford would have a significant and unavoidable adverse impact on air quality, both individually and cumulatively.

The Panama EIR identified the Supercenter and Lowe's as the two anchor tenants. The Gosford EIR did not identify any tenants. In response to comments questioning the environmental effects resulting from locating two Supercenters in a 3.6-mile radius, the Gosford EIR states that no tenants have been identified. However, it is clear from the administrative record that prior to certification of the Gosford EIR, the public and the City knew that one of Gosford's tenants was going to be a Supercenter.

The planning commission and the City Council considered the two projects at the same meetings. On February 12, 2003, the City Council certified the EIR's and adopted statements of overriding considerations on the nonpublic consent calendar. Then, after public hearing, it approved both projects and granted associated zoning changes and general plan amendments.

In March 2003, BCLC filed two CEQA actions challenging the sufficiency of the EIR's and contesting the project approvals and related land use entitlements (the Panama action and the Gosford action).

Soon thereafter, construction related activities commenced on the project sites. In July 2003, the trial court denied BCLC's request for a temporary restraining order enjoining construction related activities at the Gosford site.

Trial was held on the Panama action in November 2003 and on the Gosford action in January 2004. In both actions, the court concluded that CEQA required study of the question whether the two shopping centers, individually or cumulatively, could indirectly trigger a series of events that ultimately result in urban decay or deterioration.

BCLC unsuccessfully sought a temporary restraining order enjoining construction related activities at the Panama site after the court orally announced its decision in the Panama action.

Argument was held concerning the proper remedy. The trial court concluded that the failure to study urban decay rendered the EIR's inadequate as informational documents and it ordered them decertified. It left the project approvals and associated land use entitlements intact and it severed the Supercenters from the remainder of the projects. It enjoined further construction of the partially built Supercenter buildings but allowed all other construction activities to continue pending full CEQA compliance. In its written judgments, the court found the EIR's deficient because they did not consider the direct and cumulative potential of "the Panama 99 project and the related Gosford Park project" to indirectly cause urban decay. However, the additional environmental review it ordered focused exclusively on the Supercenters, ordering study of the following two points: (1) cumulative impacts "on general merchandise businesses" arising from operating both Supercenters; (2) urban decay that could result from closure of the existing Wal-Mart on White Lane.

BCLC partially appealed both judgments; C & C partially cross-appealed the judgment in the Gosford action. The appeals were consolidated on our own motion.

Previously, we have denied petitions for writ of supersedeas that BCLC filed in March and June of 2004. Therein, BCLC sought an injunction prohibiting construction related activities on the project sites pending resolution of the appeals.²

During the pendency of these actions, the Lowe's store was constructed and it is operating at Panama. The Kohl's store was constructed and it is operating at Gosford. Sam's Business Trust acquired a 12-acre parcel at Gosford and we were notified in June 2004 that this entity would seek issuance of a building permit to construct the Sam's Club. A group known as Gosford at Pacheco LLC, has purchased 25 acres of the Gosford site. Both Supercenters are partially constructed.

DISCUSSION

At the outset, it is necessary to explicitly reject certain philosophical and sociological beliefs that some of the parties have vigorously expressed. For the record, we do not endorse BCLC's elitist premise that so-called "big box" retailers are undesirable in a community and are inherently inferior to smaller merchants, nor do we affirm its view that Wal-Mart, Inc. (Wal-Mart), is a destructive force that threatens the viability of local communities. Wal-Mart is not a named party in these actions and we rebuff BCLC's transparent attempt to demonize this corporation. We do not know whether Wal-Mart's entry into a geographic region or expansion of operations within a region is desirable for local communities. Similarly, we do not know whether Wal-Mart is a "good" or a "bad" employer. We offer no comment on Wal-Mart's alleged miserly compensation and benefit package because BCLC did not link the asserted low wages

² BCLC made a disastrous tactical choice when it did not diligently and expeditiously seek a preliminary injunction in the trial court and extraordinary relief in this court at the first hint of construction activities. By the time BCLC petitioned us, the Kohl's store at Gosford was operating and the Lowe's store at Panama was almost complete. At that point, the equities did not weigh in BCLC's favor.

and absence of affordable health insurance coverage to direct or indirect adverse environmental consequences.

Likewise, we will not dignify with extended comment C & C's complaint that BCLC is just a "front" for a grocery worker's union whose disgruntled members feel threatened by nonunionized Wal-Mart's entry into the grocery business. As will be explained, BCLC has standing to pursue this litigation and it exhausted its administrative remedies. This is sufficient. We do not know whether Wal-Mart adversely affects the strength of organized labor and we have not considered this question.

In sum, we have no underlying ideological agenda and have strictly adhered to the accepted principle that the judicial system has a narrow role in land use battles that are fought through CEQA actions. "The only role for this court in reviewing an EIR is to ensure that the public and responsible officials are adequately informed "of the environmental consequences of their decisions *before* they are made." (Berkeley Keep Jets Over The Bay Com. v. Board of Port Cmrs. (2001) 91 Cal.App.4th 1344, 1356 (Berkeley).)

I. Standard of Review

CEQA is codified at Public Resources Code section 21000 et. seq. CEQA is augmented by the state CEQA Guidelines, codified at title 14 of the California Code of Regulations section 15000 et. seq.³ The Guidelines must be interpreted "in such a way as to 'afford the fullest possible protection of the environment.'" (*Friends of the Eel River v. Sonoma County Water Agency* (2003) 108 Cal.App.4th 859, 868 (*Eel River*).) No party has challenged the legality of any of the applicable Guidelines and none of them appear to be "clearly unauthorized or erroneous under CEQA." (*Laurel Heights*

³ Unless otherwise specified, statutory references are to the Public Resources Code. The state CEQA Guidelines will be cited as Guidelines.

Improvement Assn. v. Regents of University of California (1993) 6 Cal.4th 1112, 1123, fn. 4 (*Laurel Heights II*).) Therefore, we will afford them “great weight.” (*Ibid.*)

The applicable standard of review is well established. If the substantive and procedural requirements of CEQA are satisfied, a project may be approved even if it would create significant and unmitigable impacts on the environment. (*Fairview Neighbors v. County of Ventura* (1999) 70 Cal.App.4th 238, 242.) “In reviewing an agency’s determination under CEQA, a court must determine whether the agency prejudicially abused its discretion. (§ 21168.5.) Abuse of discretion is established if the agency has not proceeded in a manner required by law or if the determination is not supported by substantial evidence.” (*Dry Creek Citizens Coalition v. County of Tulare* (1999) 70 Cal.App.4th 20, 25-26 (*Dry Creek*).) Courts are “not to determine whether the EIR’s ultimate conclusions are correct but only whether they are supported by substantial evidence in the record and whether the EIR is sufficient as an information document.” (*Association of Irrigated Residents v. County of Madera* (2003) 107 Cal.App.4th 1383, 1391 (*Irrigated Residents*).) “The appellate court reviews the administrative record independently; the trial court’s conclusions are not binding on it.” (*Id.* at p. 1390.)

“The EIR must contain facts and analysis, not just the bare conclusions of the agency.” [Citation.] ‘An EIR must include detail sufficient to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project.’” (*Irrigated Residents, supra*, 107 Cal.App.4th at p. 1390.) “CEQA requires an EIR to reflect a good faith effort at full disclosure; it does not mandate perfection, nor does it require an analysis to be exhaustive.” (*Dry Creek, supra*, 70 Cal.App.4th at p. 26.) Therefore, “[n]oncompliance with CEQA’s information disclosure requirements is not per se reversible; prejudice must be shown.” (*Irrigated Residents, supra*, 107 Cal.App.4th at p. 1391; § 21005, subd. (b).) Failure to comply with the information disclosure requirements constitutes a prejudicial abuse of discretion when the omission of relevant information has precluded informed decision making and

informed public participation, regardless whether a different outcome would have resulted if the public agency had complied with the disclosure requirements. (*Dry Creek, supra*, 70 Cal.App.4th at p. 26; *Irritated Residents, supra*, 107 Cal.App.4th at p. 1391.)

The substantial evidence standard is applied to conclusions, findings and determinations. It also applies to challenges to the scope of an EIR's analysis of a topic, the methodology used for studying an impact and the reliability or accuracy of the data upon which the EIR relied because these types of challenges involve factual questions. (*Federation of Hillside & Canyon Associations v. City of Los Angeles* (2000) 83 Cal.App.4th 1252, 1259 (*Hillside*)). "Substantial evidence is defined as 'enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached.'" (*Irritated Residents, supra*, 107 Cal.App.4th at p. 1391; Guidelines, § 15384, subd. (a).) Substantial evidence is not "[a]rgument, speculation, unsubstantiated opinion or narrative, evidence which is clearly inaccurate or erroneous, or evidence of social or economic impacts which do not contribute to, or are not caused by, physical impacts on the environment is not substantial evidence. Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts." (§ 21082.2, subd. (c); Guidelines, § 15384.)

II. Procedural Issues

A. Standing

C & C asserts that BCLC lacks standing because it is an economic competitor and not a bona fide environmental group. We reject this accusation as unproved speculation. The record supports the trial court's determination that BCLC has standing to pursue this litigation. "CEQA litigants often may be characterized as having competing economic interests." (*Burrtec Waste Industries, Inc. v. City of Colton* (2002) 97 Cal.App.4th 1133, 1138.) One of BCLC's members is a homeowner residing near Gosford and he spoke in opposition to the projects at a public hearing prior to their approval. This is sufficient to

satisfy CEQA's liberal standing requirement. (*Id.* at pp. 1138-1139; *Bozung v. Local Agency Formation Com.* (1975) 13 Cal.3d 263, 272 (*Bozung*).) In any event, unions have standing to litigate environmental claims. (See, e.g., *International Longshoremen's & Warehousemen's Union v. Board of Supervisors* (1981) 116 Cal.App.3d 265.) Since C & C did not support with legal argument or authority its perfunctory assertion that the trial court erred by quashing a deposition meant to elicit facts about BCLC's standing, we deem this point to be without foundation and reject it on this basis. (*In re Steiner* (1955) 134 Cal.App.2d 391, 399.)

B. Exhaustion

Next, we reject C & C's complaint about the timing of BCLC's objections to the shopping centers. C & C decries BCLC's failure to submit written comments on the draft EIR's and points out that BCLC's attorney presented his client's oral and documentary objections to the projects at the public hearing concerning project approvals that was held by the City Council on February 12, 2003. C & C does not specifically contend with proper legal argument and citation to applicable authority that BCLC failed to exhaust its administrative remedies but this appears to be the implication of its argument. Although we could dismiss as undeveloped whatever legal point C & C might have intended, we have elected to substantively resolve the exhaustion question because the issue is likely to reoccur.

Exhaustion of administrative remedies is a jurisdictional prerequisite to maintenance of a CEQA action. Only a proper party may petition for a writ of mandate to challenge the sufficiency of an EIR or the validity of an act or omission under CEQA. The petitioner is required to have "objected to the approval of the project orally or in writing during the public comment period provided by this division or prior to the close of the public hearing on the project before the issuance of the notice of determination." (§ 21177, subd. (b).) The petitioner may allege as a ground of noncompliance any objection that was presented by any person or entity during the administrative

proceedings. (*Resource Defense Fund v. Local Agency Formation Com.* (1987) 191 Cal.App.3d 886, 894.) Failure to participate in the public comment period for a draft EIR does not cause the petitioner to waive any claims relating to the sufficiency of the environmental documentation. (*Galante Vineyards v. Monterey Peninsula Water Management Dist.* (1997) 60 Cal.App.4th 1109, 1120-1121 (*Galante*)). However, the lead agency is not required to incorporate in the final EIR specific written responses to comments received after close of the public review period. (*City of Poway v. City of San Diego* (1984) 155 Cal.App.3d 1037, 1043-1044.)

When discussing exhaustion some opinions have identified certification of the EIR rather than approval of the project as the crucial cutoff point. (See, e.g., *Galante, supra*, 60 Cal.App.4th at p. 1121.) However, section 21177 specifically refers to close of the public hearing on project approval prior to issuance of the notice of determination, not certification of the EIR. (§ 21177, subds. (a) & (b).) The correct formulation is expressed in *Hillside, supra*, 83 Cal.App.4th at page 1263: “[A] party can litigate issues that were timely raised by others, but only if that party objected to the project approval on any ground during the public comment period or prior to the close of the public hearing on the project.”

We believe that the apparent inaccuracy in some case law results from the fact that environmental review is not supposed to be segregated from project approval. “[P]ublic participation is an ‘essential part of the CEQA process.’” (*Laurel Heights II, supra*, 6 Cal.4th at p. 1123.) Although public hearings are encouraged, they are not explicitly required by CEQA at any stage of the environmental review process. (Guidelines, § 15087, subd. (i).) “Public comments may be restricted to written communications.” (Guidelines, § 15202, subd. (a).) Yet, “[p]ublic hearings on draft EIRs are sometimes required by agency statute, regulation, rule, ordinance, or the agency’s written procedures for implementation of CEQA.” (1 Kostka & Zischke, Practice Under the Cal. Environmental Quality Act (Cont.Ed.Bar 2004) § 9.26, p. 408 (CEQA Practice).) “If an

agency provides a public hearing on its decision to carry out or approve a project, the agency should include environmental review as one of the subjects for the hearing.” (Guidelines, § 15202, subd. (b).) Since project approval and certification of the EIR generally occur during the same hearing, the two events are sometimes treated as interchangeable. (See, e.g., *Hillside*, *supra*, 83 Cal.App.4th at p. 1257 [final EIR certified at same hearing during which project was approved]; *Irritated Residents*, *supra*, 107 Cal.App.4th at p. 1389 [same].)

C & C disparagingly refers to BCLC’s oral presentation and its submission of evidence at the February 12, 2003 City Council hearing as a last minute “document dump” and an intentional delaying tactic, pointing out that EIR’s had been certified prior to opening of the public hearing. We reject this complaint because C & C omitted the key fact that the City had improperly segregated environmental review from project approval in contravention of Guidelines section 15202, subdivision (b). The planning commission bifurcated the process by agendizing certification of the EIR’s as nonpublic hearing items and separately agendizing project approval and related land use entitlements as public hearing items. Similarly, the City Council agendized certification of the EIR’s on the closed consent calendar and agendized the “concurrent general plan amendment/zone change[s]” necessary to implement the projects on the public hearing calendar. Since certification of the EIR’s had been placed on the nonpublic consent calendar that was handled prior to the opening of the public hearing, counsel for BCLC necessarily voiced all of BCLC’s objections, including defects in CEQA compliance, during the hearing on project approvals. He specifically objected to the bifurcated process and asked for certification of the EIR’s to be removed from the consent calendar and heard concurrently with the hearing on the project approvals and land use entitlements. The City Attorney recommended against this, incorrectly stating that this “would open up the entire EIR process, open up the new comment period, and delay the entire project because it would not be able to certify the EIR tonight.”

City appears to have thought that the public's role in the environmental review process ends when the public comment period expires. Apparently, it did not realize that if a public hearing is conducted on project approval, then new environmental objections could be made until close of this hearing. (§ 21177, subd. (b); Guidelines, § 15202, subd. (b); *Hillside, supra*, 83 Cal.App.4th at p. 1263.) If the decision making body elects to certify the EIR without considering comments made at this public hearing, it does so at its own risk. If a CEQA action is subsequently brought, the EIR may be found to be deficient on grounds that were raised at any point prior to close of the hearing on project approval.

C & C seems to assume that it was somehow entitled to final project approval in February 2003. On the contrary, the City Council was not obligated to certify the EIR's that evening. "[E]xpediency should play no part in an agency's efforts to comply with CEQA." (*San Franciscans for Reasonable Growth v. City and County of San Francisco* (1984) 151 Cal.App.3d 61, 74 (*Reasonable Growth*)). As was cogently noted by the trial court, "the public agency decides when they are going to certify the EIR.... [¶] ... [¶] ... They didn't have to do it that night." C & C's complaint that allowing project opponents to raise objections after close of the public comment period for the draft EIR allows them to "sandbag" project proponents and delay certification "ad infinitum" should be presented to the Legislature, for it is a complaint about the design of the CEQA process.

We reject C & C's related contention that BCLC failed to participate in the public review process prior to certification of the EIR's because it is factually incorrect. BCLC actively participated in the administrative review process prior to certification of the EIR's. The City Planning Commission accepted public comment concerning the adequacy of the draft EIR's at a hearing on October 3, 2002. Sheila Stubblefield, who is described in the minutes of this meeting as BCLC's president and founder, spoke in opposition to both projects at that meeting. After the City Planning Commission voted in December 2002 to recommend certification of the EIR's and approval of the projects,

BCLC notified the City in writing that it was appealing the planning commission's decision. The issues specifically raised by BCLC in this letter include urban decay and cumulative impacts. If an EIR is certified by an unelected planning commission, then the lead agency must allow the public an opportunity to appeal the certification to an elected body. (§ 21151, subd. (c); Guidelines, § 15090, subd. (b); *Vedanta Society of So. California v. California Quartet, Ltd.* (2000) 84 Cal.App.4th 517, 525-526.) BCLC sent a second letter to City before the February 2003 City Council meeting. It outlined several inadequacies in the EIR's and raised other objections to approvals of the project. Then, BCLC's legal counsel appeared at the City Council meeting and proffered oral and documentary support for BCLC's previously expressed position that the EIR's were legally inadequate. Since the certification of the EIR's had been placed on the nonpublic consent calendar, he necessarily spoke during the hearing on project approvals.

Finally, we dismiss C & C's assertion that BCLC only challenged the Supercenter aspect of the shopping centers. The evidence contradicts this position and demonstrates that BCLC's objections concerning urban decay and cumulative impacts related to the shopping centers as a whole. For example, BCLC's December 2002 letter appealing the decision of the planning commission specifically referenced the addition of over one million square feet of retail space. Nowhere within this letter did BCLC mention Wal-Mart or the Supercenters. BCLC's February 2003 letter also references urban decay as a consequence of the shopping centers and it cites relevant authorities. The trial court's oral decisions and written judgments found the EIR's deficient because they failed to consider whether the shopping centers could indirectly cause urban decay. It was only the remedy that inexplicably was limited to the Supercenters.

In essence, C & C has imputed bad faith on BCLC's part without offering any evidence to justify the accusation. BCLC actively and properly participated in the administrative review process. It did not contravene CEQA by challenging the adequacy of the EIR's at the February 2003 City Council meeting and submitting evidence

supporting their position. There is no indication in the record that if the City had seriously considered the objections asserted by BCLC and others and if it had revised the EIR's in response to these objections, BCLC subsequently would have asserted new inadequacies solely to delay the projects. It is the City's bifurcated process, which resulted in segregation of environmental review from project approval, that supports an imputation of bad faith, an inference BCLC civilly does not press.

C. Mootness

Developers achieved an important practical victory when they convinced the trial court to leave the project approvals in place, sever the Supercenters from the remainder of the projects and allow construction of the rest of the shopping centers to proceed prior to full CEQA compliance. As a result, retail businesses currently are operating at both project sites and nonparties have acquired portions of the project sites. This has generated substantial economic and psychological pressures in favor of the shopping centers as presently approved and partially constructed. BCLC cannot provide any precedent for closure of an operating retail establishment because the retailer's landlord failed to adequately comply with CEQA and it has not asked us to order these businesses to cease operations pending full CEQA compliance. Given this state of affairs, questions necessarily arise concerning redressability and consequent mootness. Has the danger of irreversible momentum in favor of the shopping centers, about which we warned in *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713 at page 742 (*Raptor*), been realized?

Undoubtedly some would view further environmental study of the partially completed projects as a futile waste of time and money. Since CEQA's purpose is not to generate meaningless paperwork (*Bozung, supra*, 13 Cal.3d at p. 283), we were tempted to find the alleged defects in CEQA compliance essentially nonredressable and therefore moot. Yet, after reviewing briefing on this question, we decided not to adopt this rather

cynical position. For the following reasons, we have concluded that the CEQA issues remain viable and therefore, we decline to dismiss the appeals as moot.

First, developers expressly recognized that they were proceeding at their own risk when they relied on the contested project approvals during the pendency of this litigation. When an injunction is not granted after commencement of a CEQA action, the agency is to assume that the contested EIR or negative declaration satisfies CEQA's requirements. However, "[a]n approval granted by the responsible agency in this situation provides only permission to proceed with the project at the applicant's risk prior to a final decision in the lawsuit." (Guidelines, § 15233, subd. (b).) Although BCLC's failure to diligently and expeditiously seek injunctive relief necessitated our denial of its belated pleas for issuance of extraordinary relief pending issuance of this opinion, it did not provide developers with a "pass" on full CEQA compliance or grant them any vested interest in improvements that were completed at their own risk. The sale or lease of land to third parties was beyond BCLC's control. Such third party transactions do not immunize defective land use approvals. As a matter of public policy and basic equity, developers should not be permitted to effectively defeat a CEQA suit merely by building out a portion of a disputed project during litigation or transferring interests in the underlying real property. Failure to obtain an injunction should not operate as a de facto waiver of the right to pursue a CEQA action.

Second, questions concerning urban decay and cumulative impacts constitute important issues of broad public interest that are likely to reoccur. (*Lundquist v. Reusser* (1994) 7 Cal.4th 1193, 1202, fn. 8; *Cucamongans United for Reasonable Expansion v. City of Rancho Cucamonga* (2000) 82 Cal.App.4th 473, 479.)

Finally, even at this late juncture full CEQA compliance would not be a meaningless exercise of form over substance. The City possesses discretion to reject either or both of the shopping centers after further environmental study and weighing of the projects' benefits versus their environmental, economic and social costs. As

conditions of reapproval, the City may compel additional mitigation measures or require the projects to be modified, reconfigured or reduced. The City can require completed portions of the projects to be modified or removed and it can compel restoration of the project sites to their original condition. (*Association for a Cleaner Environment v. Yosemite Community College Dist.* (2004) 116 Cal.App.4th 629, 641; *Woodward Park Homeowners Assn. v. Garreks, Inc.* (2000) 77 Cal.App.4th 880, 888-890.) We presume that the City will fully and sincerely assess the new information contained in the revised EIR's and that it will fairly and independently decide whether reapproval of the projects is in the best interests of the City's residents, giving no weight to the fact that the shopping centers are partially constructed.

III. Urban Decay

Water contamination and air pollution, now recognized as very real environmental problems, initially were scoffed at as the alarmist ravings of environmental doomsayers. Similarly, experts are now warning about land use decisions that cause a chain reaction of store closures and long-term vacancies, ultimately destroying existing neighborhoods and leaving decaying shells in their wake. In this case, the trial court recognized that the shopping centers posed a risk of triggering urban decay or deterioration⁴ and it concluded that CEQA required analysis of this potential impact. C & C has challenged this determination. We find C & C's arguments unpersuasive and agree that CEQA requires analysis of the shopping centers' individual and cumulative potential to indirectly cause urban decay.

Guidelines section 15126.2 requires an EIR to identify and focus on the significant environmental impacts of the proposed project. In relevant part, this section provides:

⁴ Some of the parties use the term "urban blight," assuming that it is interchangeable with "urban decay." This is incorrect. "Blight" is a term with specialized meaning that has not been shown to be applicable. (See Health & Saf. Code, § 33030 et. seq.)

“Direct and indirect significant effects of the project on the environment shall be clearly identified and described, giving due consideration to both the short-term and long-term effects.” (Guidelines, § 15126.2, subd. (a).) Guidelines section 15064, subdivision (d) mandates that both primary (direct) and “reasonably foreseeable” secondary (indirect) consequences be considered in determining the significance of a project’s environmental effect.

“CEQA is not a fair competition statutory scheme.” (*Waste Management of Alameda County, Inc. v. County of Alameda* (2000) 79 Cal.App.4th 1223, 1235.) Therefore, the economic and social effects of proposed projects are outside CEQA’s purview. (Guidelines, § 15131, subd. (a).) Yet, if the forecasted economic or social effects of a proposed project directly or indirectly will lead to adverse physical changes in the environment, then CEQA requires disclosure and analysis of these resulting physical impacts. (*Friends of Davis v. City of Davis* (2000) 83 Cal.App.4th 1004, 1019 (*Friends of Davis*); *Citizens for Quality Growth v. City of Mt. Shasta* (1988) 198 Cal.App.3d 433, 445-446 (*Mt. Shasta*).) Subdivision (e) of Guidelines section 15064 provides that when the economic or social effects of a project cause a physical change, this change is to be regarded as a significant effect in the same manner as any other physical change resulting from the project. (See, e.g., *El Dorado Union High School Dist. v. City of Placerville* (1983) 144 Cal.App.3d 123, 131 [potential of increased student enrollment in an already overcrowded school resulting from construction of the proposed apartment complex was an environmental effect that required treatment in an EIR because it could lead to the necessity of constructing at least one new high school].) Conversely, where economic and social effects result from a physical change that was itself caused by a proposed project, then these economic and social effects may be used to determine that the physical change constitutes a significant effect on the environment. (See, e.g., *Christward Ministry v. Superior Court* (1986) 184 Cal.App.3d 180, 197 [when a waste management facility was proposed next to a religious retreat center, CEQA required study whether the

physical impacts associated with the new facility would disturb worship in the natural environment of the retreat center].) Guidelines section 15131, subdivision (a) provides, “An EIR may trace a chain of cause and effect from a proposed decision on a project through anticipated economic or social changes resulting from the project to physical changes in turn caused by the economic or social changes. The intermediate economic or social changes need not be analyzed in any detail greater than necessary to trace the chain of cause and effect. The focus of the analysis shall be on the physical changes.”

Case law already has established that in appropriate circumstances CEQA requires urban decay or deterioration to be considered as an indirect environmental effect of a proposed project. The relevant line of authority begins with *Citizens Assn. for Sensible Development of Bishop Area v. County of Inyo* (1985) 172 Cal.App.3d 151 (*Bishop*). There, the appellate court held that adoption of multiple negative declarations for different aspects of the same large regional shopping center violated CEQA. (*Id.* at p. 167.) The court also agreed with appellant that on remand “the lead agency must consider whether the proposed shopping center will take business away from the downtown shopping area and thereby cause business closures and eventual physical deterioration of downtown Bishop.” (*Id.* at p. 169.) Citing Guidelines section 15064, the court found that the lead agency had an affirmative duty to consider whether the new shopping center would start an economic chain reaction that would lead to physical deterioration of the downtown area. (*Id.* at p. 170.) Therefore, “[o]n remand the lead agency should consider physical deterioration of the downtown area to the extent that potential is demonstrated to be an indirect environmental effect of the proposed shopping center.” (*Id.* at p. 171.)

Next, *Mt. Shasta, supra*, 198 Cal.App.3d 433, invalidated an EIR for a proposed shopping center for numerous reasons. In relevant part, the court determined that the EIR was defective because it failed to “consider the potential physical effect of the rezoning on the central business area. The EIR pointed out the proposed project may pose a

significant economic problem for existing businesses, but offered little analysis of the issue.” (*Id.* at p. 445.) The court rejected respondent’s justification that “no analysis of economic effects was required in the EIR.” (*Id.* at p. 446.) Citing *Bishop, supra*, 172 Cal.App.3d 151 and Guidelines section 15064, it explained that “[t]he potential economic problems caused by the proposed project could conceivably result in business closures and physical deterioration of the downtown area. Therefore, on remand, City should consider these problems to the extent that potential is demonstrated to be an indirect environmental effect of the proposed project.” (*Mt. Shasta, supra*, 198 Cal.App.3d at p. 446.)

City of Pasadena v. State of California (1993) 14 Cal.App.4th 810 addressed this issue as part of its determination whether a project to relocate a parole office was exempt from CEQA. In assessing whether the significant effect exception applied, the court discussed *Bishop, supra*, 172 Cal.App.3d 151. It agreed that social and economic effects must be considered if they will cause physical changes but found *Bishop* distinguishable because appellant in this case had not made a “showing or argument that [relocation of the parole office] would cause the physical deterioration of the area.” (*Id.* at p. 828.)

Friends of Davis, supra, 83 Cal.App.4th 1004 (distinguished, *post*) rejected the position that identification of a Borders bookstore as a prospective tenant in a retail development compelled supplemental environmental review. There, the City of Davis (Davis) certified an EIR for a specific plan that reflected designation of the subject property for retail use. The applicant subsequently acquired an option to purchase the property and applied for design review of a proposed retail development that conformed to the specific plan and current zoning designation. During the design review process, it was revealed that one of the tenants would be a Borders bookstore. Davis planning staff took the position that the design review process did not differentiate between one type of retail tenant and another. Over objection from citizens who sought to use the design review ordinance to exclude Borders from locating in Davis, the planning commissions’

decision to approve the design review application was upheld. The appellate court agreed with Davis, carefully explaining that it was “not reviewing the record to determine whether it demonstrates a possibility of environmental impact, but are viewing it in a light most favorable to the City’s decision in order to determine whether substantial evidence supports the decision not to require additional review.” (*Id.* at p. 1021.) Prior environmental review already encompassed retail use of the property. A subsequent EIR was not required merely because it “appears likely” that Borders would compete with existing bookstores. (*Ibid.*) Appellant had not presented any evidence supporting its assumptions “that existing downtown bookstores will not be able to compete with Borders and will close[,] ... that the bookstores will not be replaced by new or different businesses ...[and] that the bookstore closures will cause other downtown businesses to close, thus leading to a general deterioration of the downtown area.” (*Ibid.*)

Most recently, it was held that the project description for a proposed warehouse distribution center did not have to specifically identify the end user because this information did not implicate new or different environmental effects other than those that had been addressed in the EIR. (*Maintain Our Desert Environment v. Town of Apple Valley* (2004) 120 Cal.App.4th 396 (*Apple Valley*).)

It is apparent from the case law discussed above that proposed new shopping centers do not trigger a conclusive presumption of urban decay. However, when there is evidence suggesting that the economic and social effects caused by the proposed shopping center ultimately could result in urban decay or deterioration, then the lead agency is obligated to assess this indirect impact. Many factors are relevant, including the size of the project, the type of retailers and their market areas and the proximity of other retail shopping opportunities. The lead agency cannot divest itself of its analytical and informational obligations by summarily dismissing the possibility of urban decay or deterioration as a “social or economic effect” of the project.

C & C contends that study is not required because the record does not contain substantial evidence proving that the shopping centers will cause urban decay. This argument founders because it is premised on the wrong standard of review. Substantial evidence is the standard applied to conclusions reached in an EIR and findings that are based on such conclusions. (*Irritated Residents, supra*, 107 Cal.App.4th at pp. 1390-1391.) BCLC is not challenging a conclusion in the EIR's that the shopping centers would not indirectly cause urban decay or a finding adopted by the City. It is not arguing that the City used the wrong methodology in assessing whether urban decay will be an indirect effect of the project or challenging the validity of an expert's opinion on this topic. Rather, BCLC's argument is that the EIR's failed to comply with the information disclosure provisions of CEQA because they omitted any meaningful consideration of the question whether the shopping centers could, individually or cumulatively, trigger a series of events that ultimately cause urban decay. Neither EIR even contains a statement indicating reasons why it had been determined that urban decay was not a significant effect of the proposed projects. (§ 21100, subd. (c).) BCLC is challenging the City's view that such an analysis was purely economic and therefore was outside the scope of CEQA. The substantial evidence standard of review is not applied to this type of CEQA challenge. The relevant question is whether the lead agency failed to proceed as required by law. (1 Kostka & Zischke, CEQA Practice, *supra*, § 12.5, pp. 464-466.1.)

"[A]lthough the agency's factual determinations are subject to deferential review, questions of interpretation or application of the requirements of CEQA are matters of law. [Citations.] While we may not substitute our judgment for that of the decision makers, we must ensure strict compliance with the procedures and mandates of the statute." (*Save Our Peninsula Committee v. Monterey County Bd. Of Supervisors* (2001) 87 Cal.App.4th 99, 118 (*Peninsula*).) If C & C is contending that claims concerning omission of information from an EIR essentially should be treated as inquiries whether there is substantial evidence supporting the decision approving the projects, we reiterate

our rejection of this position for the reasons previously expressed in *Irritated Residents*, *supra*, 107 Cal.App.4th at page 1392.

In any event, C & C's position has no substantive merit. There is a great deal of evidence in the record supporting the validity of concerns that the shopping centers could cause a ripple of store closures and consequent long-term vacancies that would eventually result in general deterioration and decay within and outside the market area of the two shopping centers. Although much of BCLC's evidence specifically applied to the Supercenters, the administrative records as a whole contain sufficient indication that addition of 1.1 million square feet of retail space in the shopping centers' overlapping market areas could start the chain reaction the ultimately results in urban decay to necessitate study of the issue with respect to the entirety of the shopping centers.

First, BCLC retained a professor of economics at San Francisco State University, C. Daniel Vencill, to study the cumulative economic effects that will be caused by the two new Supercenters (the Vencill report). Together with two colleagues, Vencill reviewed literature and analyzed the five-mile area surrounding the project sites. Photographs were taken of the sites and "existing blight conditions which have remained unabated for some years in the area surrounding the proposed new sites" were documented. The Vencill report determined that the two shopping centers are in the same shopper catchment area and they will be competing with each other as well as with existing retail establishments. It states that "[t]here are [four] existing shopping centers and malls that will be adversely affected by [Gosford and Panama]. One regional mall is suspected of being in serious decline." The two Supercenters represent significant excess capacity as configured and located. "This will result in oversaturation and fall-out of weaker competitors in the at-risk commercial blight zone the developments will create." The Vencill report identified 29 businesses, primarily but not exclusively grocery stores, that are at direct risk of closure. Two Albertsons are "facing extinction" and a small nursery that is located across the street from Gosford "would certainly become defunct."

Additionally, no "alternative plans" were observed for the Wal-Mart building on White Lane that will be vacant when this Wal-Mart store is replaced by the Supercenter at Panama. The Vencill report finds:

"It is reasonably probable [that] competition provided by the two proposed [Supercenters] (i.e., the diversion of existing sales from local merchants), individually and especially cumulatively, will have economic impacts on existing businesses triggering a chain of events that may lead to adverse effects on the physical environment in the southern part of Bakersfield. One of the ways this may occur is that smaller retailers in the area, particularly those located within five miles of the sites, and even more specifically those retailers already struggling or on the verge of having to terminate operations, will be unable to compete and will have to go out of business. In turn, this may cause permanent or long-term vacancies of retail space in the area. The result is typically neglect of maintenance and repair of retail facilities, the deterioration of buildings, improvements, and facilities. This may then culminate in physical effects associated with blight-like conditions, which include visual and aesthetic impacts accompanying the physical deterioration."

BCLC also submitted numerous studies and articles analyzing the adverse effects other communities in California (San Diego, Orange County and Calexico,) and elsewhere (Oklahoma City, Oklahoma; Bath, Maine; Eastern Pennsylvania; Chicago, Illinois; Syracuse, New York) have experienced as a result of saturation of a market area with super-sized retailers.⁵ As relevant here, the authors found numerous adverse effects

⁵ Rea & Parker Research report prepared for San Diego County Taxpayers Association entitled *The Potential Economic and Fiscal Impact of Supercenters in San Diego, A Critical Analysis* (2000) of report by Boarnet & Crane entitled *The Impact of Big Box Grocers on Southern California Jobs, Wages and Municipal Finances*; *The Impact of Big Box Grocers on Southern California, Jobs, Wages, and Municipal Finances* prepared for Orange County Business Council (1999); Rea & Parker Research, *Smart Growth's Response to Big-Box Retailers: City of Villages--A Renewed Orientation Toward Communities and Neighborhoods* (2001) prepared for the independent Grocers Association of Calexico; Shils & Taylor, *Measuring the Economic and Sociological Impact of the Mega-Retail Discount Chains on Small Enterprise in Urban, Suburban and Rural Communities* (1997); Welles, *When Wal-Mart Comes to Town* (July 1, 1993) Inc.

resulting from saturation of a market area with Supercenters and similar retail facilities, such as SuperTargets and SuperKmart. These effects include, but are not limited to, physical decay and deterioration resulting from store closures in the same market area or in established areas of the community (i.e., the “traditional downtown area”) due to competitive pressures, followed by an inability to easily re-lease the vacated premises. The authors also found that it had been difficult to find tenants for buildings that formerly housed Wal-Mart stores that were replaced by the new Supercenters. Many of the empty buildings physically deteriorated.

This evidence cannot be cavalierly dismissed as “hit pieces” designed to disparage a specific corporation. Studies discussing the experiences of other communities constitute important anecdotal evidence about the way the proposed shopping centers could serve as a catalyst for urban deterioration and decay in the City. The Vencill report is extremely significant and it strongly supports BCLC’s position that CEQA requires analysis of urban decay.⁶

Moreover, numerous individuals commented about urban decay during the administrative process. For example, at the planning commission’s public hearing on the adequacy of the draft EIR’s, Cindy Fabricius stated, “[T]here are 45 empty Wal-Marts in the state of Texas. There are 34 empty standing Wal-Marts in the state of Georgia. There are 27 in Utah. Find them. Go look at them. They are empty. When Wal-Mart moves on they leave their boxes. Those boxes are not bought up by other [businesses]; who can afford that huge of a store; that huge of a rent?” Herman Lee commented that there are parts of East Bakersfield that need revitalization. Yet, the proposed shopping centers are out in the southwest part of town. He queried, “What about the people on the

⁶ City Council Member Maggard’s comment at the February 2003 City Council meeting that BCLC’s documentary support is merely fit “for recycling” demonstrates his lack of awareness of the relevant legal principles.

east side of town?” Some comments made at the February 2003 City Council meeting are also relevant. A representative of Save Mart Supermarkets spoke in opposition to the project and submitted the data concerning Oklahoma City. He stated that the addition of the two shopping centers will adversely affect existing shopping centers and asserted that the “[t]he potential for urban blight and decay is a matter which must be considered” in the EIR’s. Another commercial property owner wrote that he had been unable to re-lease a building that formerly housed a grocery store and he ended up demolishing the building. When a grocery store closes, the remainder of the stores in the shopping center are likely to close. The center “could end up with many boarded up storefronts.” Another citizen wrote a letter that included six examples of buildings in the City that formerly housed large retail stores and now are “vacant, rundown box buildings and shopping centers.” He was concerned that the proposed projects would result in more “empty warehouse type, rundown buildings” littering the City. While these individuals are not experts in any sense of the word, their firsthand observations should not casually be dismissed as immaterial because “relevant personal observations are evidence.”

(Bishop, supra, 172 Cal.App.3d at p. 173; see also Ocean View Estates Homeowners Assn., Inc. v. Montecito Water Dist. (2004) 116 Cal.App.4th 396, 402.)

The responses in the EIR’s to these and other comments do not meaningfully address the issue of urban decay. The Gosford EIR states that vacant buildings “are part of the evolutionary change of the retail environment.” It then asserts that further analysis is outside the scope of CEQA because economic and social effects are not considered environmental effects under CEQA. The response in the Panama EIR is similarly incomplete. Ignoring the question of urban decay or deterioration, it simply replies that “blight” is a legal term that does not apply. It also asserts that vacancy rates and business closures are purely economic impacts and therefore outside of CEQA. Finally, it states that a survey of vacant buildings had been prepared and this survey demonstrated that

“retailers entering or leaving the market, relocations, re-leasing to new tenants or conversions to other uses is a normal part of a dynamic market.”⁷

The Retail Impact Analysis (retail analysis) that was appended to the Panama EIR does not constitute an acceptable substitute for proper identification and analysis in an EIR. The retail analysis analyzed “the potential market support and retail sales impacts” of the Supercenter component of Panama. It found that general merchandise stores have a market area of approximately five miles; grocery stores have a market area of approximately two miles.⁸ It concluded that there is sufficient capacity to sustain the Supercenter at Panama without causing closure of existing general merchandise or grocery stores. However, the Supercenter would reduce the business volume of existing stores. The retail analysis stated that the existing Wal-Mart store building could be utilized in another unspecified capacity.

The retail analysis did not reference Gosford or consider whether there is sufficient capacity to sustain both shopping centers. It did not analyze whether the combined influx of both shopping centers would lead to the closure of existing grocery or general merchandise stores, particularly where their market areas overlap. Rather, it focused on the single narrow question whether there is sufficient demand to sustain the Supercenter at Panama. It did not meaningfully consider whether addition of 1.1 million

⁷ The parties did not mention this survey. Since the survey did not consider questions concerning the likely effects that addition of 1.1 million square feet of new retail space would have on the vacancy rate in the City or address the likelihood of re-leasing vacant premises that formerly were occupied by competitors of the proposed shopping centers, we find it unhelpful.

⁸ After stating that general merchandise stores have a market area of five miles or more, the retail analysis inexplicably assigns without explanation three miles as the relevant market area with respect to the Supercenter at Panama. Since this conclusion is not supported by any explanation or analysis and it is directly contradicted by other information in the retail analysis, we decline to afford it any weight.

square feet of new retail space, much of it housing Supercenters, Sam's Club and other large retailers such as Lowe's and Kohl's (who dominate individual merchandise areas and are sometimes referred to as "category killers") will displace older, smaller retail stores and shopping centers, leaving long-term vacancies that deteriorate and encourage graffiti and other unsightly conditions. Furthermore, the retail analysis fails to meaningfully address the question whether the building on White Lane that currently houses a Wal-Mart store will experience a long-term vacancy when this store is closed. No facts are offered in support of the retail analysis's conclusion that the building can be leased to another tenant. "Can" is not equivalent to "will" and the difference in the two words is crucial when assessing whether the store closure will result in an adverse environmental impact. The retail analysis characterizes vacancies as normal parts of a dynamic and evolving retail environment without considering whether those vacancies are clustered in one area or are likely to be long term.

We agree with BCLC that *Mt. Shasta, supra*, 198 Cal.App.3d 433 is analogous. Just as in *Mt. Shasta*, it is apparent that in this case the shopping centers could, individually and cumulatively, trigger the same downward spiral of business closures, vacancies and deterioration that other communities have experienced when they allowed similar saturation development. Therefore, CEQA requires analysis of this potential environmental impact.

C & C argues that the instant case is analogous to *Friends of Davis, supra*, 83 Cal.App.4th 1004. We disagree. *Friends of Davis* considered whether a supplemental EIR was required. No zoning change or nonconformity with the existing specific plan existed and retail development on the project site had already been subjected to full environmental review. In contrast here, there has not been any previous study of the environmental effects associated with the requested zoning changes and general plan amendments. No prior EIR's considered the consequences of building shopping centers on the project sites. Rather, it is the sufficiency of the initial EIR's that is at issue.

It must be mentioned that although we do not quarrel with the holding in *Apple Valley, supra*, 120 Cal.App.4th 396, it is factually distinguishable from this situation. Here, recognition of the characteristics of the shopping centers' tenants is a necessary prerequisite to accurate identification and analysis of the environmental consequences that will result from approval of the proposed projects. When the particular type of retail business planned for a proposed project will have unique or additional adverse impacts, then disclosure of the type of business is necessary in order to accurately recognize and analyze the environmental effects that will result from the proposed project. A rendering plant has different environmental impacts than a Chandler. In the retail context, Supercenters are similarly unique. Unlike the vast majority of stores, many Supercenters operate 24 hours per day seven days a week. Such extended operational hours raise questions concerning increased or additional adverse impacts relating to lights, noise, traffic and crime. While specific identification of the name of the tenant may be unnecessary, to simply state as did the Gosford EIR that "no stores have been identified" without disclosing the type of retailers envisioned for the proposed project is not only misleading and inaccurate, but it hints at mendacity.

Accordingly, we hold that the omission of analysis on the issue of urban/suburban decay and deterioration rendered the EIR's defective as informational documents. (*Mt. Shasta, supra*, 198 Cal.App.3d at p. 446.) On remand, the EIR's must analyze whether the shopping centers, individually and/or cumulatively, indirectly could trigger the downward spiral of retail closures and consequent long-term vacancies that ultimately result in decay. (*Ibid.*; *Bishop, supra*, 172 Cal.App.3d at p. 171.)

IV. Cumulative Impacts

The Gosford EIR and the Panama EIR considered each shopping center in isolation. The cumulative impacts sections of each EIR does not reference the other shopping center and neither EIR contains any discussion of or reference to retail development in the area surrounding the project site. BCLC argues that the "failure to

treat Panama and Gosford as ‘relevant projects’ for purposes of evaluating cumulative effects” is “[a]n overarching legal flaw in both EIRs.” We agree. The trial court correctly realized that the cumulative effect of the two shopping centers must be analyzed with respect to the topic of urban decay. However, it inexplicably failed to follow the applicable chain of reasoning to its logical conclusion and recognize that the cumulative effects analyses were fundamentally flawed because they did not recognize that the shopping centers were relevant projects and did not analyze the type and severity of impacts that will result from construction and operation of both projects.

“A fundamental purpose of CEQA is to ensure that governmental agencies regulate their activities ‘so that major consideration is given to preventing environmental damage, while providing a decent home and satisfying living environment for every Californian.’ [Citations.] The heart of CEQA is the EIR. [Citation.] Its purposes are manifold, but chief among them is that of providing public agencies and the general public with detailed information about the effects of a proposed project on the environment. [Citations.] [¶] Part of this vital informational function is performed by a cumulative impact analysis.” (*Reasonable Growth, supra*, 151 Cal.App.3d at pp. 72-73.) “The term “[c]umulative impacts” refer[s] to two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts.” (*Raptor, supra*, 27 Cal.App.4th at p. 739.) “[A] cumulative impact consists of an impact which is created as a result of the combination of the project evaluated in the EIR together with other projects causing related impacts.” (Guidelines, § 15130, subd. (a)(1).) “‘The cumulative impact from several projects is the change in the environment which results from the incremental impact of the project when added to other closely related past, present, and reasonably foreseeable probable future projects. Cumulative impacts can result from individually minor but collectively significant projects taking place over a period of time.’ (CEQA Guidelines, § 15355, subd. (b).)

‘Cumulative impact analysis “assesses cumulative damage as a whole greater than the sum of its parts.”’ (*Irritated Residents, supra*, 107 Cal.App.4th at p. 1403.)

“The significance of a comprehensive cumulative impacts evaluation is stressed in CEQA.” (*Schoen v. Department of Forestry & Fire Prevention* (1997) 58 Cal.App.4th 556, 572.) Proper cumulative impact analysis is vital “because the full environmental impact of a proposed project cannot be gauged in a vacuum. One of the most important environmental lessons that has been learned is that environmental damage often occurs incrementally from a variety of small sources. These sources appear insignificant when considered individually, but assume threatening dimensions when considered collectively with other sources with which they interact.” (*Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98, 114, fns. omitted; see also *Los Angeles Unified School Dist. v. City of Los Angeles* (1997) 58 Cal.App.4th 1019, 1025.) “[C]onsideration of the effects of a project or projects as if no others existed would encourage the piecemeal approval of several projects that, taken together, could overwhelm the natural environment and disastrously overburden the man-made infrastructure and vital community services. This would effectively defeat CEQA’s mandate to review the actual effect of the projects upon the environment.” (*Las Virgenes Homeowners Federation, Inc. v. County of Los Angeles* (1986) 177 Cal.App.3d 300, 306.)

When faced with a challenge that the cumulative impacts analysis is unduly narrow, the court must determine whether it was reasonable and practical to include the omitted projects and whether their exclusion prevented the severity and significance of the cumulative impacts from being accurately reflected. (*Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 723 (*Farm Bureau*).)

It is beyond dispute that the two shopping centers are both “present” projects within the meaning of Guidelines section 15355, subdivision (b). They were proposed within a month of each other and both shopping centers were considered at the same

meetings of the City Planning Commission and the City Council. Many citizens, including BCLC, voiced their opinions about both shopping centers at the same time. Thus, the determinative question is whether Gosford and Panama also are “closely related” within the meaning of Guidelines section 15355, subdivision (b). We answer this question in the affirmative.

First, there is evidence showing that the two shopping centers will compete with each other. Some of the anchor tenants at both shopping centers are regional draws with a market area in excess of five miles. The Vencill report states that the market area for stores like Supercenters is about five miles. It concludes that the two shopping centers are in the same shopper catchment area and the Supercenters will compete with each other. Similarly, the retail analysis states that general merchandise stores have a market area of five miles or more. Grocery stores have a market area of two miles or more. Since Gosford and Panama are 3.6 miles apart, the two market areas necessarily overlap. As previously discussed, the record contains numerous studies analyzing the adverse effects other communities have experienced when a market area was saturated with large-scale retailers such as traditional Wal-Mart stores and their siblings, Supercenters and Sam’s Clubs. Studies discussing the adverse effects that other communities experienced after similar retail development constitutes important anecdotal evidence about the adverse impacts that the City may experience.

Second, the Gosford EIR and the Panama EIR show that the two shopping centers share four arterial roadways: Pacheco Road, Panama Lane, Harris Road and White Lane. A planning commissioner stated that he was concerned that the two projects could have combined, unrecognized adverse impacts on traffic.

Third, ambient air quality is a serious concern. Each of the EIR’s concluded that the proposed shopping center would have an unavoidable adverse impact on ambient air quality. The San Joaquin Valley Air Pollution Control District (SJVAPCD) expressed the opinion that each project “and others similar to it will cumulatively reduce air quality

We are unpersuaded by C & C's argument that the cumulative impacts of the two projects were accounted for because the Gosford EIR based its discussion of certain environmental effects, such as air quality, on a summary of projections contained in an approved planning document. Use of a planning document does not preclude challenge to the accuracy or sufficiency of the cumulative impacts analysis. As recognized in a respected CEQA treatise, "[t]he summary-of-projections approach may present problems if the projections in the general plan or related planning document are inaccurate or outdated." (1 Kostka & Zischke, CEQA Practice, *supra*, § 13.39, p. 537.) Such is the case here. Both of the shopping center projects required amendment of the general plan. The addition of large regional shopping centers such as Gosford and Panama are not accounted for in the projections. We need not comment on the propriety of using the list of projects method for some aspects of cumulative impacts analysis and using the summary of projections for other aspects because, under either method, the cumulative impacts section is underinclusive. (*Id.* at § 13.39, pp. 537-538.)

Proper cumulative impacts analysis is absolutely critical to meaningful environmental review of the shopping center projects. Four analogous cases support our conclusion that the EIR's are legally inadequate due to their underinclusive and misleading cumulative impacts analysis.

In *Reasonable Growth*, *supra*, 151 Cal.App.3d 61, the appellate court ordered an EIR prepared for a high-rise project to be decertified because it underestimated the amount of new downtown development and consequently had not evaluated "the true severity and significance" of the cumulative impacts. (*Id.* at p. 80.) The court explained that the danger created by providing understated information subverts an agency's ability to adopt appropriate and effective mitigation measures, skews its perspective concerning the benefits of the particular projects under consideration and precludes it from gaining a true perspective on the consequences of approving the project. (*Ibid.*)

Similarly, in *Farm Bureau, supra*, 221 Cal.App.3d 692, this court determined that limiting the scope of cumulative impacts analysis to the mid-San Joaquin valley was unduly restrictive and resulted in an inaccurate minimization of the cumulative impacts on air quality resulting from construction of the proposed cogeneration plan together with the many other proposed energy projects. (*Id.* at pp. 721-724.)

Next, in *Raptor, supra*, 27 Cal.App.4th 713, we invalidated an EIR prepared for a housing project, in part because it failed to analyze the project in conjunction with other development projects in the surrounding area. (*Id.* at pp. 739-741.)

Most recently, in *Eel River, supra*, 108 Cal.App.4th 859, the court found that an EIR considering a project to divert water was legally inadequate because the cumulative impacts analysis did not take into account other pending proposals that would curtail water diversions. The court concluded that it was “reasonable and practical” to include other pending curtailment proposals in the cumulative impacts analysis and that this omission resulted in an EIR that failed to alert decision makers and the public to the possibility that the agency would not be able to supply water to its customers in an environmentally sound way. (*Id.* at pp. 868-872.)

Following and applying these authorities, we likewise conclude that the EIR’s are inadequate because they did not analyze the cumulative environmental impacts of other past, present and reasonably foreseeable retail projects in the market areas served by the proposed shopping centers. Neither EIR meaningfully addressed comments stating that the two shopping centers will have cumulative adverse impacts. As a result, the cumulative impacts analyses in both EIR’s are underinclusive and misleading.

The record raises numerous questions respecting the type and severity of cumulative adverse environmental impacts that likely will result from the two shopping centers. Topics such as traffic, noise, air quality, urban decay and growth inducement